



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

---

शिमला, शुक्रवार, 10 सितम्बर, 2010/19 भाद्रपद, 1932

---

हिमाचल प्रदेश सरकार

पंचायती राज विभाग

शिमला-9, 8 सितम्बर, 2010

**संख्या: पीसीएच-एचए(1) 18/2008.**—हिमाचल प्रदेश पंचायती राज (निर्वाचन) संशोधन नियम, 2010 का प्रारूप, हिमाचल प्रदेश पंचायती राज अधिनियम, 1994 (1994 का 4) की धारा 186 के उपबन्धों के अधीन यथा अपेक्षित, इस विभाग की समसंख्यक अधिसूचना तारीख 24 अगस्त, 2010 द्वारा राजपत्र, हिमाचल प्रदेश में तारीख 25 अगस्त, 2010 को आक्षेपों और सुझावों को आमन्त्रित करने के लिए प्रकाशित किया गया था ;

और नियत अवधि के दौरान प्राप्त किए गए आक्षेप(आक्षेपों)/सुझाव(सुझावों) पर राज्य सरकार द्वारा, समयक रूप से विचार किया गया है;

अतः हिमाचल प्रदेश की राज्यपाल, हिमाचल प्रदेश पंचायती राज अधिनियम, 1994 (1994 का 4) की धारा 186 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अधिसूचना संख्या पीसीएच-एचए(3)6/94, तारीख 7 फरवरी, 1995 द्वारा अधिसूचित और तारीख 8 फरवरी, 1995 को राजपत्र हिमाचल प्रदेश में प्रकाशित हिमाचल प्रदेश पंचायती राज (निर्वाचन) नियम, 1994 में और संशोधन करने के लिए निम्नलिखित नियम बनाती हैं, अर्थात्:-

**1. संक्षिप्त नाम.**—इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश पंचायती राज (निर्वाचन) संशोधन नियम, 2010 है।

**2. नियम 2 का संशोधन.**—हिमाचल प्रदेश पंचायती राज (निर्वाचन) नियम, 1994 (जिन्हें इसमें इसके पश्चात् “उक्त नियम” कहा गया है), के नियम 2 के उप-नियम (1) के खण्ड (ग) के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:-

“(ग) “जिला निर्वाचन अधिकारी (पंचायत)” से राज्य निर्वाचन आयोग द्वारा, पंचायतों के निर्वाचन के संचालन हेतु, नियुक्त अधिकारी अभिप्रेत है और सहायक जिला निर्वाचन अधिकारी भी इसके अन्तर्गत है:

परन्तु जहां जिला निर्वाचन अधिकारी और सहायक जिला निर्वाचन अधिकारी की नियुक्ति किसी जिला के लिए की जाती है वहां राज्य निर्वाचन आयोग उनकी नियुक्तियों के क्रम में, उस क्षेत्र को भी विनिर्दिष्ट करेगा, जिसकी बावत प्रत्येक ऐसा अधिकारी अधिकारिता का प्रयोग करेगा।”।

**3. नियम 11 का प्रतिस्थापन.**—उक्त नियमों के नियम 11 के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:-

**“11. निर्वाचन क्षेत्रों के परिसीमन का अन्तिम प्रकाशन.**—(1) नियम 6, 8 और 9 के अधीन किया गया परिसीमन, नियम 10 के अधीन किए गए मण्डलायुक्त के आदेशों, यदि कोई हों, के दृष्टिगत संशोधित किया जाएगा और परिसीमन को, इस निमित्त प्रस्ताव के प्रकाशित किए जाने की तारीख से तीस दिन की अवधि के भीतर अंतिम रूप दिया जाएगा। पंचायतों के निर्वाचन क्षेत्रों के परिसीमन के अंतिम आदेशों की एक-एक प्रति, उपायुक्त, जिला परिषद्, पंचायत समिति, ग्राम पंचायत के कार्यालयों के सूचना बोर्डों पर, और ऐसे अन्य स्थानों पर, जैसे उपायुक्त विनिश्चित करे, चिपकाई जाएगी तथा उसकी प्रतियां राज्य निर्वाचन आयोग और राज्य सरकार को भी भेजी जाएंगी।

(2) कोई भी निर्वाचक, अंतिम परिसीमन आदेश की प्रति उपायुक्त या, यथास्थिति, जिला परिषद्, पंचायत समिति, ग्राम पंचायत के सचिव को आवेदन करके अभिप्राप्त कर सकेगा, जिसे वह उक्त निर्वाचक को, प्रति पृष्ठ या उसके भाग के लिए, पांच रूपए की दर से, संदाय पर, रोकड़ रसीद के विरुद्ध उपलब्ध करवाएगा।”।

**4. नियम 14 का संशोधन.**—उक्त नियमों के नियम 14 में खण्ड (ङ) के पश्चात् निम्नलिखित खण्ड (च) जोड़ा जाएगा, अर्थात्:-

“(च) किसी नगरपालिका या किसी अन्य ग्राम सभा में एक मतदाता के रूप में पहले से ही रजिस्ट्रीकृत है।”।

**5. नियम 23 का संशोधन.**—उक्त नियमों के नियम 23 के अंतिम परंतुक में “पांच दिन” शब्दों के स्थान पर “नौ दिन” शब्द रखे जाएंगे।

**6. नियम 24 का संशोधन.**—उक्त नियमों के नियम 24 के उप-नियम (3) के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

“(3) जिला निर्वाचन अधिकारी (पंचायत), उप-नियम (2) के अधीन सूचना में विनिर्दिष्ट अवधि के अवसान के पश्चात्, उसे प्राप्त आक्षेपों, यदि कोई हों, पर विचार करेगा और, यदि उसका यह समाधान हो जाता है कि आवेदक निर्वाचक नामावली में रजिस्ट्रीकृत किए जाने का हकदार है, तो तीन दिन की अवधि के भीतर, ऐसे नाम को उसमें सम्मिलित करने के लिए निदेश देगा:

परन्तु यदि आवेदक, जिसका नाम सम्मिलित करने हेतु आदेश किया गया है, पहले ही उसी ग्राम सभा के किसी अन्य निर्वाचन क्षेत्र या अन्य ग्राम सभा या नगरपालिका की निर्वाचक नामावली में रजिस्ट्रीकृत है, तो ऐसा नाम उस निर्वाचक नामावली से हटाया जाएगा:

परन्तु यह और कि नियम 32 के अधीन निर्वाचन कार्यक्रम के प्रकाशन के पश्चात्, किसी भी समय इस नियम के अधीन नामांकन पत्रों के फाइल करने के लिए नियत अंतिम तारीख से नौ दिन के अपश्चात्, जिला निर्वाचन अधिकारी (पंचायत) को आवेदन किया जाएगा:

परन्तु यह और कि नामांकन करने हेतु अंतिम तारीख को या इसके पश्चात् से निर्वाचन प्रक्रिया समाप्त होने तक किसी भी प्रविष्टि का न तो संशोधन या पक्षांतरण किया जाएगा और न ही उसे हटाया जाएगा।”।

**7. नियम 25 का संशोधन.**—उक्त नियमों के नियम 25 में,—

(क) उप-नियम (1) में खण्ड (ड) का लोप किया जाएगा; और

(ख) उप-नियम (2) के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

“(2) प्रत्येक निर्वाचन क्षेत्र के लिए जिला निर्वाचन अधिकारी (पंचायत) द्वारा अधिप्रमाणित निर्वाचक नामावली की एक पूर्ण प्रति ऐसे स्थान पर और ऐसी अवधि के लिए रखी जाएगी जैसी राज्य निर्वाचन आयोग विनिर्दिष्ट करे।”।

**8. नियम 28 का संशोधन.**—उक्त नियमों के नियम 28 में,—

(क) उप-नियम (5) और (7) में “एक तिहाई” शब्द जहां जहां वे आते हैं, के स्थान पर “आधा” शब्द रखा जाएगा;

(ख) उप-नियम (8) के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

“(8) जनसंख्या की प्रतिशतता के आधार पर अनुसूचित जातियों और अनुसूचित जनजातियों तथा अनुसूचित जातियों और अनुसूचित जनजातियों से सम्बन्धित महिलाओं और सामान्य प्रवर्ग से सम्बन्धित महिलाओं के लिए आरक्षित निर्वाचन क्षेत्र, प्रथम निर्वाचन की तारीख से प्रत्येक पांच वर्ष के पश्चात् चक्रानुक्रम से आरक्षित होंगे। अगले निर्वाचन के समय अगली अधिकतम प्रतिशतता की जनसंख्या वाले निर्वाचन क्षेत्र, अनुसूचित जाति और अनुसूचित जनजाति तथा अनुसूचित जाति और अनुसूचित जनजाति से सम्बन्धित महिलाओं और सामान्य प्रवर्ग की महिलाओं सहित, आरक्षित किए जाएंगे और ऐसा ही क्रम पश्चातवर्ती निर्वाचनों के लिए होगा:

परन्तु किसी विशिष्ट प्रवर्ग के लिए किसी निर्वाचन क्षेत्र में आरक्षण की तब तक पुनरावृत्ति नहीं होगी, जब तक कि सभी अन्य निर्वाचन क्षेत्र चक्रानुक्रम द्वारा इस परिधि में नहीं आ जाते:

परन्तु यह और कि किसी विशिष्ट प्रवर्ग के लिए आरक्षणद्व ऐसे निर्वाचन क्षेत्र में, जहां उस प्रवर्ग की जनसंख्या उस निर्वाचन की कुल जनसंख्या के 5 प्रतिशत से कम है, चक्रानुक्रमित नहीं किया जाएगा।”; और

(ग) यथा प्रतिस्थापित उप-नियम (8) के पश्चात् निम्नलिखित उप-नियम अंतःस्थापित किया जाएगा, अर्थात्:-

“(8-क) इन नियमों में किसी बात के होते हुए भी, हिमाचल प्रदेश पंचायती राज (निर्वाचन) संशोधन नियम, 2010 के प्रारंभ के पश्चात् संचालित किए जाने वाले निर्वाचनों के लिए स्थानों के आरक्षण का रोस्टर, प्रारंभिक चरण से इस प्रकार प्रचालित होगा, मानो कि उक्त निर्वाचन उप-नियम (8) के अधीन प्रथम बार संचालित किए जा रहे हों और तत्पश्चात् स्थानों का आरक्षण इस नियम के अधीन विभिन्न निर्वाचन क्षेत्रों में चक्रानुक्रमित किया जाएगा।”।

**9. अध्याय-5क का अंतःस्थापन.**—उक्त नियमों के अध्याय-5 के पश्चात् निम्नलिखित अध्याय अंतःस्थापित किया जाएगा, अर्थात्:-

### “अध्याय-5क पोल ड्यूटी मतपत्र

**49-क. मतदान ड्यूटी पर आरूढ़ निर्वाचकों का मतदान हेतु हकदार होना.**—इसमें इसके पश्चात् विनिर्दिष्ट अपेक्षाओं को उनके द्वारा पूर्ण करने के अध्याधीन, निर्वाचक, जो उसी ब्लाक (खण्ड) के भीतर मतदान ड्यूटी पर आरूढ़ हैं, पंचायत के किसी निर्वाचन में मतदान करने के हकदार होंगे।

**49-ख. मतदान ड्यूटी पर आरूढ़ मतदाताओं द्वारा सूचना.**—उसी ब्लाक (खण्ड) के भीतर मतदान ड्यूटी पर कोई निर्वाचक, जो किसी निर्वाचन में मतदान करने का इच्छुक हो, उस पंचायत हेतु रिटर्निंग आफिसर को प्ररूप-28क में इस प्रकार आवेदन करेगा ताकि वह, मतदान की तारीख से कम से कम सात दिन या ऐसी कमतर अवधि, जैसी राज्य निर्वाचन आयोग अनुज्ञात करे, के भीतर उसके पास पहुंचे; और यदि रिटर्निंग आफिसर का समाधान हो जाता है कि आवेदक मतदान ड्यूटी पर आरूढ़ एक निर्वाचक है, तो वह उसको ग्राम पंचायत के सदस्य, उप प्रधान, प्रधान, पंचायत समिति के सदस्य और जिला परिषद् के सदस्य के निर्वाचन के लिए उपयोग में लाए जाने वाले पोल ड्यूटी मतपत्रों को जारी करेगा।

**49-ग. मतपत्र का प्ररूप.**—उसी ब्लाक (खण्ड) के भीतर मतदान ड्यूटी पर आरूढ़ निर्वाचकों को जारी किए जाने वाले मतपत्र वैसे ही होंगे, जैसे संबंधित पंचायत के अन्य निर्वाचकों को जारी किए जाते हैं।

**49-घ. मतपत्र जारी करना.**—(1) ग्राम पंचायत हेतु रिटर्निंग आफिसर द्वारा, ऐसे मतदाता को पोल ड्यूटी मतपत्र, निम्नलिखित सहित व्यक्तिगत रूप से, परिदत्त किए जाएंगे,—

- (क) प्ररूप-28ख में दो घोषणा प्ररूप (एक ग्राम पंचायत के लिए और दूसरा पंचायत समिति तथा जिला परिषद् हेतु);
  - (ख) प्ररूप-28ग में पांच लिफाफे (प्रत्येक मतपत्र के लिए एक);
  - (ग) प्ररूप-28घ में रिटर्निंग आफिसर को संबोधित दो बड़े लिफाफे (एक ग्राम पंचायत के लिए और अन्य पंचायत समिति तथा जिला परिषद् हेतु); और
  - (घ) प्ररूप-28ङ में निर्वाचक के मार्गदर्शन हेतु अनुदेश।
- (2) ग्राम पंचायत के लिए रिटर्निंग आफिसर उसी समय पर,—
- (क) निर्वाचन नामावली की चिह्नांकित प्रति में यथा प्रविष्ट मतदाता की निर्वाचक नामावली संख्या को, मतपत्र के प्रतिपर्ण पर अभिलिखित करेगा;
  - (ख) निर्वाचक नामावली की चिह्नांकित प्रति में, मतदाता का नाम यह उपदर्शित करने के लिए चिह्नित करेगा कि उसे मतपत्र जारी किया गया है तथापि उस मतदाता को जारी किए गए मतपत्र की क्रम संख्या को उसमें अभिलिखित नहीं करेगा।

(ग) यह सुनिश्चित करेगा कि मतदाता को मतदान केन्द्र पर मतदान करना अनुज्ञात नहीं किया गया है।

(3) किसी निर्वाचन में, निर्वाचन ड्यूटी पर आरूढ़ किसी मतदाता को कोई भी मतपत्र जारी करने से पूर्व, उस मतपत्र की क्रम संख्या को ऐसी रीति में प्रभावी रूप से गुप्त रखा जाएगा जिसके लिए राज्य निर्वाचन आयोग निदेश दे।

(4) ग्राम पंचायत के लिए रिटर्निंग आफिसर, मतदान ड्यूटी पर आरूढ़ समस्त मतदाताओं को मतपत्र जारी करने के पश्चात्, निर्वाचक नामावली की चिह्नकित प्रति को एक पैकेट में सीलबंद करेगा और पैकेट पर इसकी विषय वस्तु का संक्षिप्त वर्णन तथा इसे सीलबंद करने की तारीख को अभिलिखित करेगा।

(5) ग्राम पंचायत निर्वाचन के लिए रिटर्निंग आफिसर, मतदान ड्यूटी पर आरूढ़ मतदाताओं को जारी किए गए मतपत्रों के प्रतिपणों को भी, पृथक पैकेट में सीलबंद करेगा और पैकेट पर इसकी विषय वस्तु का संक्षिप्त वर्णन तथा इसे सीलबंद करने की तारीख को अभिलिखित करेगा।

**49-ड. मत देना/वोट रिकार्ड करना.**—(1) कोई मतदाता, जिसने पोल ड्यूटी मतपत्र प्राप्त किया है और मत देना चाहता है वह, प्ररूप-28ड में अन्तर्विष्ट निदेशों के अनुसार मतपत्र पर अपना मत दर्ज (रिकार्ड) करेगा और तत्पश्चात् प्रत्येक मतपत्र को प्ररूप-28ग में पृथक लिफाफे में बंद करेगा।

(2) मतदाता, पंचायत के रिटर्निंग आफिसर या ऐसे अधिकारी जैसा राज्य निर्वाचन आयोग द्वारा इस निमित्त अधिसूचित किया जाए, की उपस्थिति में प्ररूप-28-ख में घोषणा पर हस्ताक्षर करेगा।

**49-च. मतपत्र की वापसी.**—(1) मतदाता अपना मत देने और नियम 49-ड के अधीन घोषणा हस्ताक्षरित करने के पश्चात् ग्राम पंचायत निर्वाचन हेतु नियुक्त रिटर्निंग आफिसर या ऐसे अधिकारी, जैसा राज्य निर्वाचन आयोग इस निमित्त अधिसूचित करे, को ऐसे समय के भीतर जैसा नियत किया जाए तथा प्ररूप-28ड में उसे संसूचित अनुदेशों के अनुसार मतपत्र और घोषणा को वापस करेगा।

(2) यदि रिटर्निंग आफिसर द्वारा पोल ड्यूटी मतपत्र से युक्त कोई लिफाफा, उप-नियम (1) में नियत समय के अवसान के पश्चात् प्राप्त किया जाता है तो वह उस पर उस की प्राप्ति की तारीख और समय अंकित करेगा और ऐसे समस्त लिफाफों को इक्कठा पृथक पैकेट में रखेगा।

(3) ग्राम पंचायत के लिए रिटर्निंग आफिसर या ऐसा अधिकारी जैसा राज्य निर्वाचन आयोग द्वारा इस निमित्त अधिसूचित किया जाए, यह सुनिश्चित करेगा कि उस द्वारा प्राप्त किए गए पोल ड्यूटी मतपत्र से युक्त समस्त लिफाफे—

(क) ग्राम पंचायत के निर्वाचन की दशा में, सम्वद्ध ग्राम पंचायत के लिए निर्वाचन हेतु सहायक रिटर्निंग आफिसर को दे दिए गए हैं;

(ख) पंचायत समिति के सदस्यों के निर्वाचन की दशा में, सम्वद्ध पंचायत समिति निर्वाचन के रिटर्निंग आफिसर को मतों की गणना के समय दे दिए गए हैं; और

(ग) जिला परिषद् के सदस्यों के निर्वाचन की दशा में सम्वद्ध जिला परिषद् निर्वाचन के रिटर्निंग आफिसर को, मतों की गणना के समय दे दिए गए हैं।

**10. नियम 73-क का अंतःस्थापन.**—उक्त नियमों के नियम 73 के पश्चात् निम्नलिखित नियम अंतःस्थापित किया जाएगा, अर्थात्:—

**"73-क. पोल ड्यूटी मतपत्र के माध्यम से प्राप्त किए गए मतपत्रों की गणना.**—(1) रिटर्निंग आफिसर इसमें इसके पश्चात् उपबंधित रीति में प्रथमतः पोल ड्यूटी मतपत्रों का निपटान करेगा।

(2) रिटर्निंग आफिसर द्वारा प्ररूप-28घ में प्राप्त किया गया कोई भी लिफाफा इस निमित्त नियत समय के अवसान के पश्चात् नहीं खोला जाएगा और ऐसे किसी लिफाफे में रखे गए किसी भी मत की गणना नहीं की जाएगी।

(3) अन्य लिफाफे एक के बाद एक खोले जाएंगे और जैसे ही प्रत्येक लिफाफा खोला जाता है, रिटर्निंग आफिसर प्ररूप-28ख में अंतर्विष्ट घोषणा की प्रथमतः जांच करेगा और यदि उक्त घोषणा नहीं पाई जाती है या सम्यक् रूप से हस्ताक्षरित तथा अनुप्रमाणित नहीं हुई है, या अन्यथा सारभूत रूप से त्रुटिपुण है, या यदि मतपत्र की क्रम संख्या, (प्ररूप-28ख) में प्रविष्ट की गई क्रम संख्या से, प्ररूप-28ग में लिफाफे पर पृष्ठांकित क्रम संख्या से भिन्न है तो उस लिफाफे को नहीं खोला जाएगा और उसपर समुचित पृष्ठांकन करने के पश्चात्, रिटर्निंग आफिसर इसमें अंतर्विष्ट मतपत्र को रद्द करेगा।

(4) इस प्रकार पृष्ठांकित प्रत्येक लिफाफा और इसके साथ प्राप्त घोषणा को प्ररूप-28घ में बनाए लिफाफे में रखा जाएगा और प्ररूप-28घ में ऐसे समस्त लिफाफे अलग पैकेट में रखे जाएंगे जो मुहरबंद किए जाएंगे और उन पर निर्वाचन क्षेत्र का नाम गणना की तारीख और इसकी संक्षिप्त अन्तर्वस्तु को अभिलिखित किया जाएगा।

(5) रिटर्निंग आफिसर तय प्ररूप-28ख की समस्त घोषणाओं, जो उसे व्यवस्थित रूप में प्राप्त हुई हों, को अलग पैकेट में रखेगा और उन्हें प्ररूप-28ग में किसी लिफाफे को खोलने से पूर्व मुहरबंद करेगा और उस पर उप-नियम (4) में निर्दिष्ट विशिष्टियों को अभिलिखित करेगा।

(6) प्ररूप-28घ में लिफाफे जो इस नियम के पूर्वगामी उपबन्धों के अधीन पहले से ही व्यवहृत नहीं किए गए हैं तब एक के बाद एक खोले जाएंगे और रिटर्निंग आफिसर प्रत्येक मतपत्र की छानबीन करेगा और उस पर अभिलिखित (दर्ज) मतपत्र की वैधता विनिश्चित करेगा।

(7) पोल ड्यूटी मतपत्र अस्वीकृत हो जाएगा यदि—

(क) मत को अभिलिखित (दर्ज) करने के चिन्ह के अतिरिक्त उस पर कोई अन्य चिन्ह अंकित किया गया हो या कोई लेखन किया गया हो जिससे मतदाता की पहचान हो सकती है; या

(ख) यदि उसपर मत दर्ज नहीं हुआ हो; या

(ग) यदि एक से अधिक प्रत्याशियों के लिए मत दर्ज किए गए हों; या

(घ) यदि यह अप्रमाणित (जाली) मतपत्र है; या

(ङ) यदि यह इस तरह से क्षतिग्रस्त या विकृत हुआ है कि प्रामाणिक मतपत्र के रूप में इसकी पहचान स्थापित नहीं कि जा सकती है; या

(च) यदि इसे निर्वाचन अधिकारी द्वारा मतदाता को भेजे गए लिफाफे के साथ वापिस नहीं भेजा गया है।

(8) पोल ड्यूटी मतपत्र पर अभिलिखित (दर्ज) मत अस्वीकृत किया जाएगा यदि मत के लिए दर्शाया गया चिन्ह मतपत्र पर इस रीति से लगाया जाता है कि यह संदेहजनक लगे कि किस प्रत्याशी को मतदान किया गया है।

(9) पोल ड्यूटी मतपत्र पर अभिलिखित (दर्ज) मत केवल इस आधार पर अस्वीकृत नहीं किया जाएगा कि मत देने के लिए दर्शाया गया चिन्ह स्पष्ट नहीं है या एक से अधिक बार लगाया गया है, यदि मतपत्र को चिह्नित करने के तरीके से आशय सपष्टतः प्रतीत होता हो कि मत किस विशिष्ट अभ्यर्थी को डाला गया है।

(10) रिटर्निंग आफिसर प्रत्येक प्रत्याशी के पक्ष में अभिलिखित (डाले गए) समस्त विधिमान्य मतों की गणना करेगा और कुल मतों को निम्नलिखित रीति में परिणाम शीट पृष्ठ पर अभिलिखित करेगा, अर्थात्:—

- (क) ग्राम पंचायत के सदस्य के मामले में प्ररूप-32 में;
- (ख) प्रधान/उपप्रधान के मामले में प्ररूप-34 में;
- (ग) पंचायत समिति के सदस्य के मामले में प्ररूप-36 में;
- (घ) जिला परिषद के सदस्य के मामले में प्ररूप-38 में, और इसकी घोषणा करेगा।

(11) समस्त वैध मतपत्र और अस्वीकृत मतपत्र अलग-अलग पुलिन्दे में पैकेट में रखे जाएंगे जो रिटर्निंग आफिसर और प्रत्याशी या उनके निर्वाचन अभिकर्ताओं या गणना अभिकर्ताओं की मोहरों से सीलबंद किए जाएंगे, यदि वे उस पर अपनी सील लगाना चाहें, और उस प्रकार मोहरबंद पैकेट पर निर्वाचन क्षेत्र का नाम, मतगणना की तारीख और इसकी अन्तर्वस्तु का संक्षिप्त विवरण अभिलिखित किया जाएगा।”।

**11. नियम 75 का संशोधन.**—उपरोक्त नियमों में, नियम 75 में खण्ड (VI) के पश्चात् निम्नलिखित परन्तुक जोड़ा जाएगा, अर्थात्:—

“परन्तु प्ररूप 33, 35, 37 और 39 में परिणाम की घोषणा केवल तभी की जाएगी जब अभ्यर्थी या उसके निर्वाचन अभिकर्ता या उसके गणना अभिकर्ता को नियम 79 के अधीन पुनः गिनती करने के अधिकार का युक्तियुक्त अवसर न दे दिया गया हो।”।

**12. नियम 78 का संशोधन.**—उपरोक्त नियमों के नियम 78 के उप-नियम (2) में, “नियमों” शब्द के पश्चात् “75,” अंक और चिन्ह अन्तःस्थापित किए जाएंगे।

**13. नियम 79 का प्रतिस्थापन.**—उपरोक्त नियमों के नियम 79 के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

**“79. मतों की पुनःगणना.**—(1) नियम 75 के अधीन गणना पूरी होने और रिजल्टशीट तैयार करने के पश्चात्, यथास्थिति, जिला निर्वाचन अधिकारी (पंचायत) या रिटर्निंग आफिसर या उसके द्वारा प्राधिकृत कोई अन्य अधिकारी रिजल्टशीट की विशिष्टियों की घोषणा करेगा।

(2) ऐसी घोषणा किए जाने के पश्चात् अभ्यर्थी या उसकी अनुपस्थिति में उसका निर्वाचन अभिकर्ता या उसका कोई गणना अभिकर्ता, यथास्थिति, लिखित में या इस निमित्त उसके द्वारा प्राधिकृत किसी अन्य अधिकारी को, पहले से ही गणना किए गए समस्त मत पत्रों या किन्हीं मतपत्रों की पुनः गणना करने के लिए आधार दर्शाते हुए, आवेदन करेगा:

परन्तु यदि पुनःगणना के लिए युक्तियुक्त समय के भीतर कोई आवेदन प्राप्त नहीं होता है तो नियम 75 के खण्ड (ट) और (VI) के उपबन्धों के अनुसार परिणाम घोषित कर दिया जाएगा।

(3) उप-नियम (2) के अधीन पुनः गणना के लिए आवेदन पर, यथास्थिति, जिला निर्वाचन अधिकारी (पंचायत) या रिटर्निंग आफिसर या उसके द्वारा इस निमित्त प्राधिकृत अन्य अधिकारी मामले का विनिश्चय करेगा और आवेदन को पूर्ण रूप से या भागतः स्वीकार कर सकेगा या यदि उसे यह तुच्छ या अयुक्तियुक्त लगे तो अस्वीकृत कर सकेगा :

परन्तु, यथास्थिति, जिला निर्वाचन अधिकारी (पंचायत) या रिटर्निंग आफिसर अधिकारी, या उसके द्वारा प्राधिकृत किसी अन्य अधिकारी का प्रत्येक विनिश्चय लिखित में होगा और जिसमें इस निमित्त कारण अन्तर्विष्ट होंगे।

(4) यथास्थिति, जिला निर्वाचन अधिकारी (पंचायत) या रिटर्निंग आफिसर या उनके द्वारा इस निमित्त प्राधिकृत कोई अन्य अधिकारी, उप-नियम (3) के अधीन आवेदन को या तो पूर्णतः या भागतः स्वीकार (अनुज्ञात) करने का विनिश्चय करता है तो वह—

(क) अपने विनिश्चय के अनुसार मतपत्रों की पुनःगणना करेगा;

(ख) ऐसी पुनःगणना के पश्चात् उस विस्तार तक जहां तक आवश्यक है परिणाम में संशोधन करेगा; और

(ग) उसके द्वारा किए गए ऐसे संशोधन की घोषणा करेगा।

(5) उप-नियम (4), के अधीन प्रत्येक अभ्यर्थी के पक्ष में किए गए मतदान की कुल संख्या की घोषणा किए जाने के पश्चात्, यथास्थिति, जिला निर्वाचन अधिकारी (पंचायत) या रिटर्निंग आफिसर या उसके द्वारा प्राधिकृत ऐसा अन्य अधिकारी, रिजल्टशीट को पूर्ण करके उसपर हस्ताक्षर करेगा और तत्पश्चात् पुनःगणना के लिए कोई भी आवेदन ग्रहण नहीं किया जाएगा।”।

**14. नियम 84 का संशोधन.**—उपरोक्त नियमों के नियम 84 के स्थान पर निम्नलिखित रखा जाएगा, अर्थातः—

**“84. निर्वाचन कागज पत्रों का निपटारा.**—नियम 61, 62, 67 और 83 में निर्दिष्ट निर्वाचन पत्र और पैकेटस हिमाचल प्रदेश पंचायती राज (साधारण) नियम, 1997 के नियम 124 के अधीन राजपत्र में प्रकाशन की तारीख से 90 दिन की अवधि तक रखे जा सकेंगे और तत्पश्चात् राज्य सरकार या राज्य निर्वाचन आयोग या सक्षम न्यायालय या लम्बित विधिक कार्यवाहियों में दिए गए प्रतिकूल किसी निदेश के अधीन नष्ट किए जाएंगे।”।

**15. नियम 85 का संशोधन.**—उक्त नियमों के नियम 85 में, —

(क) उप नियम (6) में, “अधिनियम की धारा 127 के अधीन शपथ देने या राज्यनिष्ठा का प्रतिज्ञान करने” शब्दों के स्थान “गणपूर्ति के पूर्ण होने” शब्द रखे जाएंगे; और

(ख) उप नियम (13) में, “क्रास (ग) का चिन्ह लगाएगा” शब्दों और कोष्ठकों के स्थान पर “प्रयोजन के लिए उपलब्ध करवाई गई मोहर को लगाकर मतपत्र को चिह्नित करेगा” शब्द रखे जाएंगे।

**16. नियम 86 का संशोधन.**—उक्त नियमों के नियम 86 में,—

(क) उप नियम (6) में “अधिनियम की धारा 127 के अधीन शपथ दिलाए जाने या राज्य निष्ठा के प्रतिज्ञान कराने” शब्दों के स्थान पर “गणपूर्ति के पूर्ण होने” शब्द रखे जाएंगे; और

(ख) उप नियम (13) में, “क्रास (ग) करेगा” शब्दों और कोष्ठकों के स्थान पर “प्रयोजन के लिए उपलब्ध करवाई गई मोहर को लगाकर मत पत्र को चिह्नित करेगा” शब्द रखे जाएंगे।

**17. नियम 87 का संशोधन.**—उक्त नियमों के नियम 87 में, —

(क) उप-नियम (5) और (7) में “एक तिहाई” शब्द जहां जहां वे आते हैं, के स्थान पर “आधा” शब्द रखा जाएगा;

(ख) उप नियम (8) में “(और पहले आरक्षित पद सामान्य प्रवर्ग के सदस्यों के लिए अनारक्षित होंगे)” कोष्ठकों और शब्दों का लोप किया जाएगा और विद्यमान परन्तुक के पश्चात् निम्नलिखित परन्तुक जोड़ा जाएगा, अर्थातः—



“परन्तु यह और कि किसी विशिष्ट प्रवर्ग के लिए आरक्षण को ऐसी ग्राम सभा में, जहां पर उस प्रवर्ग की जनसंख्या उस ग्राम सभा की कुल जनसंख्या के 5 प्रतिशत से कम है, चक्रानुक्रमित नहीं किया जाएगा।”; और

(ग) उप नियम (8) के पश्चात्, निम्नलिखित उप नियम अन्तःस्थापित किया जाएगा, अर्थातः—

“(8—क) इन नियमों में किसी बात के होते हुए भी, हिमाचल प्रदेश पंचायती राज (निर्वाचन) संशोधन नियम, 2010 के प्रारम्भ होने के पश्चात् संचालित किए जाने वाले निर्वाचनों के लिए पदों के आरक्षण का रोस्टर, प्रारम्भिक चरण से इस प्रकार प्रचालित होगा मानो उक्त निर्वाचन उप—नियम (8) के अधीन पहली बार संचालित किए जा रहे हों और तत्पश्चात्, पदों का आरक्षण इस नियम के अधीन विभिन्न ग्राम सभाओं में चक्रानुक्रमित किया जाएगा।”।

**18. नियम 88 का संशोधन.—**उक्त नियमों के नियम 88 में,—

(क) उप—नियम (5) और (7) में “एक तिहाई” शब्द जहां जहां वे आते हैं, के स्थान पर “आधा” शब्द रखा जाएगा;

(ख) उप नियम (8) में “(और पहले आरक्षित पद सामान्य प्रवर्ग के सदस्यों के लिए अनारक्षित होंगे)” कोष्ठकों और शब्दों का लोप किया जाएगा और विद्यमान परन्तुक के पश्चात्, निम्नलिखित परन्तुक जोड़ा जाएगा, अर्थातः—

“परन्तु यह और कि किसी विशिष्ट प्रवर्ग के लिए आरक्षण को ऐसी पंचायत समिति में, जहां पर उस प्रवर्ग की जनसंख्या उस पंचायत समिति की कुल जनसंख्या के 5 प्रतिशत से कम है, चक्रानुक्रमित नहीं किया जाएगा।”; और

(ग) उप नियम (8) के पश्चात्, निम्नलिखित उप नियम अन्तःस्थापित किया जाएगा, अर्थातः—

“(8—क) इन नियमों में किसी बात के होते हुए भी, हिमाचल प्रदेश पंचायती राज (निर्वाचन) संशोधन नियम, 2010 के प्रारम्भ होने के पश्चात् किए जाने वाले निर्वाचनों के लिए पदों के आरक्षण का रोस्टर, प्रारम्भिक चरण से इस प्रकार प्रचालित होगा, मानो उक्त निर्वाचन उप—नियम (8) के अधीन पहली बार संचालित किए जा रहे हों और तत्पश्चात्, पदों का आरक्षण इस नियम के अधीन विभिन्न पंचायत समितियों में चक्रानुक्रमित किया जाएगा।”।

**19. नियम 89 का संशोधन.—**उक्त नियमों के नियम 89 में,—

(क) उप—नियम (5) और (7) में “एक तिहाई” शब्द जहां जहां वे आते हैं, के स्थान पर “आधा” शब्द रखा जाएगा;

(ख) उप नियम (8) में “(और पहले आरक्षित पद सामान्य प्रवर्ग के सदस्यों के लिए अनारक्षित होंगे)” कोष्ठकों और शब्दों का लोप किया जाएगा और विद्यमान परन्तुक के पश्चात् निम्नलिखित परन्तुक जोड़ा जाएगा, अर्थातः—

“परन्तु यह और कि किसी विशिष्ट प्रवर्ग के लिए आरक्षण को ऐसी जिला परिषद् में, जहां पर उस प्रवर्ग की जनसंख्या उस जिला परिषद् की कुल जनसंख्या के 5 प्रतिशत से कम है, चक्रानुक्रमित नहीं किया जाएगा।”; और

(ग) उप नियम (8) के पश्चात्, निम्नलिखित उप नियम अन्तःस्थापित किया जाएगा, अर्थातः—

“(8—क) इन नियमों में किसी बात के होते हुए भी, हिमाचल प्रदेश पंचायती राज (निर्वाचन) संशोधन नियम, 2010 के प्रारम्भ होने के पश्चात् संचालित किए जाने वाले निर्वाचनों के लिए पदों के आरक्षण

का रोस्टर, प्रारम्भिक चरण से इस प्रकार प्रचालित होगा, मानो उक्त निर्वाचन उप-नियम (8) के अधीन पहली बार संचालित किए जा रहे हों और तत्पश्चात्, पदों का आरक्षण इस नियम के अधीन विभिन्न जिला परिषदों में चक्रानुक्रमित किया जाएगा।”।

**20. प्ररूप-11, प्ररूप-12 और प्ररूप-13 का संशोधन.**—उक्त नियमों से संलग्न प्ररूप-11, प्ररूप-12 और प्ररूप-13 में, “तारीख..... 19.....” चिन्हों, शब्दों और अंकों के स्थान पर “तारीख ..... 20.....” चिन्ह, शब्द और अंक रखे जाएंगे।

**21. प्ररूप-15 का प्रतिस्थापन.**—उक्त नियमों से संलग्न प्ररूप-15 के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

“प्ररूप-15  
{नियम 21 (1) देखें}  
निर्वाचक नामावली के अंतिम प्रकाशन की सूचना

सार्वजनिक जानकारी के लिए एतद्वारा अधिसूचित किया जाता है कि ग्राम पंचायत/पंचायत समिति/जिला परिषद्..... के निर्वाचन क्षेत्र संख्या.....(निर्वाचन क्षेत्र) की निर्वाचक नामावली के प्रारूप में पुनरीक्षण प्राधिकारी/अपीलीय प्राधिकारी द्वारा आदेशित परिवर्धन/लोप (हटाया जाना) और शुद्धिकरण को उक्त प्रारूप नामावली में समाविष्ट कर दिया गया है या ऐसे संशोधनों की सूची हिमाचल प्रदेश पंचायती राज (निर्वाचन) नियम, 1994 के अनुसार तैयार हो गई है और इस प्रकार शुद्ध (ठीक) की गई निर्वाचक नामावली की एक प्रति संशोधनों की सूची सहित अंतिम रूप में प्रकाशित कर दी गई है।

रजिस्ट्रीकरण अधिकारी।

स्थान.....

तारीख..... ”।

**22. प्ररूप-28क, प्ररूप-28ख, प्ररूप-28ग, प्ररूप-28घ, और प्ररूप-28ङ का अंतःस्थापन.**—उक्त नियमों से संलग्न प्ररूप-28 के पश्चात्, निम्नलिखित प्ररूप-28क, प्ररूप-28ख, प्ररूप-28ग, प्ररूप-28घ, और प्ररूप-28ङ जोड़े जाएंगे, अर्थात्:—

“प्ररूप-28क  
{नियम 49—ख देखें}  
रिटर्निंग आफिसर को सूचना का पत्र

सेवा में,

रिटर्निंग आफिसर,

पंचायत.....

विकास खण्ड.....

जिला..... (हिमाचल प्रदेश)

श्रीमान,

मैं उसी खण्ड (ब्लॉक) के भीतर मतदान ड्यूटी पर आरुढ़ एक मतदाता हूं और मेरा नाम ग्राम पंचायत..... पंचायत समिति..... जिला परिषद्..... के वार्ड संख्या..... के लिए निर्वाचित नामावली के ..... क्रम संख्या ..... पर प्रविष्ट (दर्ज) है।

मैं उक्त पंचायतों के आगामी निर्वाचनों (चुनावों) में ग्राम पंचायत..... के वार्ड संख्या ..... से अपना मत डालने हेतु आशयित हूँ।

भवदीय,

स्थान.....

तारीख.....

-----

प्ररूप-28ख

{नियम 49-घ (1) (क), 49-ङ (2) और 73-क (3) एवं (6) देखें}

मतदाता द्वारा घोषणा

..... के लिए निर्वाचन

(इस तरफ (स्थान) का प्रयोग केवल तभी किया जाना है जब मतदाता घोषणा पर स्वयं हस्ताक्षर करता है)

मैं एतद्वारा घोषणा करता हूँ कि मैं ही वह मतदाता हूँ जिसे उपर्युक्त निर्वाचन में क्रम संख्या ..... वाला पोल ड्यूटी मतपत्र जारी किया गया है।

मतदाता के हस्ताक्षर।

तारीख.....

पता.....

हस्ताक्षर का अनुप्रमाणन

..... मतदाता द्वारा उपर्युक्त घोषणा मेरी उपस्थिति में हस्ताक्षरित की गई है जिसे मैं व्यक्तिगत रूप से जानता हूँ/जिसकी..... (पहचानकर्ता) जिसे मैं व्यक्तिगत रूप से जानता हूँ द्वारा मेरे समाधान हेतु पहचान करवाई गई है।

अनुप्रमाणन अधिकारी के हस्ताक्षर

पहचानकर्ता के हस्ताक्षर, यदि कोई हो.....

पदनाम.....

पता.....

तारीख.....

## प्ररूप-28ग

{नियम 49—घ (1) (ख) और 73—क (5) एवं (6) देखें}  
 पोल ड्यूटी मतपत्र के लिए लिफाफा  
 (केवल एक मतपत्र डालें)

क

गणना से पूर्व लिफाफा खोला न जाए  
 •.....निर्वाचन क्षेत्र से.....का निर्वाचन  
 (पंचायत के पद का नाम जिसके लिए  
 निर्वाचन होना या किया जाना है)  
 पोल ड्यूटी मतपत्र  
 मतपत्र की क्रम संख्या.....

- निर्वाचन के उचित दस्तावेजों को यहां अन्तःस्थापित किया जाना है।

## प्ररूप-28घ

{नियम 49—ड (1) (ग) और 73—क (5) देखें}  
 पोल ड्यूटी मतपत्रों के लिए बड़ा लिफाफा

ख

निर्वाचन—तुरंत  
 पोल ड्यूटी मत पत्र  
 गणना से पूर्व लिफाफा खोला न जाए  
 सेवा में,  
 रिटर्निंग आफिसर  
 •..... निर्वाचन क्षेत्र से .....  
 के लिए (पंचायत के पद का नाम जिसके  
 लिए निर्वाचन किया जाना है) का निर्वाचन।  
 प्रेषक के हस्ताक्षर .....

- रिटर्निंग आफिसर यहां ग्राम पंचायत के यथोचित निर्वाचन क्षेत्र का नाम अन्तःस्थापित करें।

## प्ररूप-28ड

{नियम 49—ड (1) (घ) और 49—छ (1) देखें}  
 मतदाताओं की जानकारी के लिए निर्देश  
 (पंचायतों के निर्वाचन में उपयोग किए जाएं)

.....से .....के लिए •निर्वाचन।

व्यक्ति, जिनके नाम एतद्वारा भेजे गए मतपत्र पर मुद्रित किए गए हैं, उपर्युक्त निर्वाचन में अभ्यर्थी हैं। आप अपना मत, उस अभ्यर्थी, जिसे आप मत देना चाहते हैं, के नाम के विरुद्ध स्पष्टतः एक चिन्ह लगाकर, अभिलिखित (रिकार्ड) करें।

चिन्ह ऐसे लगाया जाना चाहिए ताकि वह व्यक्ति, जिसे आप अपना मत दे रहे हैं स्पष्टतया और संदेह से परे इंगित हो सके। यदि लगाया गया ऐसा चिन्ह संदेहास्पद लगता है कि किस व्यक्ति को आपने अपना मत दिया है तो आपका मत अवैध हो जाएगा।

निर्वाचित किए जाने वाले सदस्यों की संख्या एक है। कृपया याद रखें कि आपके पास केवल एक मत है। तदनुसार आपको एक से अधिक अभ्यर्थी के लिए मतदान नहीं करना चाहिए। यदि आप ऐसा करते हैं तो आपका मतपत्र अस्वीकृत कर दिया जाएगा।

मतपत्र पर अपना मत अभिलिखित (रिकार्ड) करने के लिए अपेक्षित चिन्ह के सिवाय, अपने हस्ताक्षर नहीं करें या कोई शब्द न लिखें या कोई चिन्ह चिह्नित न करें अथवा जहां कहीं भी हस्ताक्षर या लेखन न करें।

मतपत्र पर अपना मत रिकार्ड करने के पश्चात्, मतपत्र को एतद्वारा भेजे गए 'क' '।' चिह्नित छोटे लिफाफे में रखें। लिफाफा बंद कर दें और इसे मोहर बंद या अन्यथा से सुरक्षित करें।

तब आप प्ररूप-28ख में घोषणा को हस्ताक्षरित करें।

आपकी घोषणा हस्ताक्षरित होने और आपके हस्ताक्षर अनुप्रमाणित हो जाने के पश्चात्, प्ररूप-28घ में दी गई घोषणा और मतपत्र युक्त 'क' '।' चिह्नित छोटे लिफाफे को भी 'ख' 'ठ' चिह्नित बड़े लिफाफे में रखें। बड़े लिफाफे को बंद करने के पश्चात् इसे रिटर्निंग आफिसर या राज्य निर्वाचन आयोग द्वारा इस निमित्त व्यक्तिगत तौर पर प्राधिकृत किसी अधिकारी को सौंप दें। 'ख' 'ठ' चिह्नित लिफाफे पर दिए गए स्थान पर आपको अपने पूरे हस्ताक्षर करने होंगे।

- निर्वाचन के समुचित विशिष्टियों को यहां पर अन्तःस्थापित किया जाना है।

आप यह अवश्य सुनिश्चित करें कि लिफाफा,..... को• .....से पहले रिटर्निंग आफिसर या राज्य निर्वाचन आयोग द्वारा इस निमित्त किसी अधिकारी को दे दिया गया है। कृपया नोट करें कि—

- यदि आप उपर्युक्त इंगित रीति में अपनी घोषणा को अनुप्रमाणित या प्रमाणित करवाने में असफल रहते हैं तो आपका मतपत्र अस्वीकृत कर दिया जाएगा; और
- यदि लिफाफा, ..... को• ..... के पश्चात्• रिटर्निंग आफिसर या राज्य निर्वाचन आयोग द्वारा इस निमित्त प्राधिकृत किसी अधिकारी के पास पहुंचता है तो आपके मत की गणना नहीं की जाएगी

.....•

(• यहां मतों की गणना के आरम्भ होने के लिए नियत घण्टे और तारीख को विनिर्दिष्ट करें )।

**23. प्ररूप-33, प्ररूप-37, प्ररूप-39 और प्ररूप-43 का संशोधन.**—उक्त नियमों से संलग्न प्ररूप-33, प्ररूप-37, प्ररूप-39 और प्ररूप-43 में, "तारीख ..... 19....." चिन्हों, शब्दों और अंकों के स्थान पर "तारीख ... ..... 20....." चिन्ह, शब्द और अंक रखे जाएंगे।

आदेश द्वारा  
हस्ता०/—  
सचिव (पंचायती राज)।

*[Authoritative English text of this Department Notification Number PCH- HA(1)-18/2008-31189-214, dated the 8th September, 2010 as required under clause(3) of article 348 of the Constitution of India].*

## PANCHAYATI RAJ DEPARTMENT

*Shimla-171 009, the 8th September, 2010*

**NO. PCH-HA(1)18/2008.**—Whereas the draft Himachal Pradesh Panchayati Raj (Election) Amendment Rules, 2010 were published in the Rajpatra, Himachal Pradesh dated 25th August, 2010 for inviting objections and suggestions from the general public, vide this department notification of even number dated 24th August, 2010 as required under the provisions of section 186 of the Himachal Pradesh Panchayati Raj Act, 1994 (Act No. 4 of 1994);

And whereas, the objection(s)/suggestion(s) received during the stipulated period have been duly considered by the State Government;

Now, therefore, in exercise of the powers conferred by section 186 of the Himachal Pradesh Panchayati Raj Act, 1994 (Act No. 4 of 1994), the Governor of Himachal Pradesh is pleased to make the following rules further to amend the Himachal Pradesh Panchayati Raj (Election) Rules, 1994, notified vide notification No.PCH-HA(3)6/94, dated 7th February, 1995 and published in the Rajpatra of Himachal Pradesh dated 8th February, 1995, namely :-

**1. Short title.**—These rules may be called the Himachal Pradesh Panchayati Raj (Election) Amendment Rules, 2010.

**2. Amendment of rule 2.**—In rule 2 of the Himachal Pradesh Panchayati Raj (Election) Rules, 1994 (hereinafter called the „said rules“), in sub rule (1), for clause (c), the following shall be substituted, namely:-

“(c) “District Election Officer (Panchayat)” means the officer appointed by the State Election Commission for the conduct of election to the Panchayats and also includes Assistant District Election Officer:

Provided that where District Election Officer as well as Assistant District Election Officer are appointed for a District, the State Election Commission shall in the order of their appointments also specify the area in respect of which each such officer shall exercise jurisdiction.”.

**3. Substitution of rule 11.**—For rule 11 of the said rules, the following shall be substituted, namely:-

"11. *Final publication of delimitation of constituencies.*—(1) The delimitation made under rules 6, 8 and 9 shall be amended in the light of the orders of the Divisional Commissioner, if any, made under rule 10 and the delimitation shall be finalised within a period of 30 days from the date of publication of the proposal in this behalf. A copy of the final orders of the delimitation of constituencies of the Panchayats shall be affixed on the notice boards of the offices of the Deputy Commissioner, Zila Parishad, Panchayat Samiti, Gram Panchayat and at such other places as the Deputy Commissioner may decide and the copies of the same shall also be sent to the State Election Commission and the State Government.

(2) An elector may obtain a copy of the final delimitation order by making an application to the Deputy Commissioner or to the Secretary of the Zila Parishad, Panchayat Samiti, Gram

Panchayat, as the case may be, who shall make available the same to the said elector on payment of rupees five per page or part thereof against cash receipt."

**4. Amendment of rule 14.**—In rule 14 of the said rules, after clause (e), the following clause (f) shall be added, namely:-

"(f) is already registered as a voter in a Municipality or in some other Gram Sabha."

**5. Amendment of rule 23.**—In rule 23 of the said rules, in last proviso, for the words "five days", the words "nine days" shall be substituted.

**6. Amendment of rule 24.**—In rule 24 of the said rules, for sub-rule (3), the following shall be substituted, namely:-

“(3) The District Election Officer (Panchayats) shall as may be, after the expiry of the period specified in the notice under sub-rule (2), consider the objections, if any, received by him and shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct such name to be included therein within a period of 3 days:

Provided that if the applicant whose name is ordered to be included is already registered in the electoral roll of any other constituency of the same Gram Sabha or another Gram Sabha or a Municipality, such a name shall be deleted from that electoral roll:

Provided further that an application under this rule at any time after publication of the election programme under rule 32 shall be made to the District Election Officer (Panchayats) not later than 9 days before the last date fixed for the filing of nomination papers:

Provided further that no amendment or transposition or deletion of any entry shall be made on or after the last date for making nomination till the election process is over”.

**7. Amendment of rule 25.**—In rule 25 of the said rules,-

(a) in sub-rule (1), clause (e) shall be deleted; and

(b) for sub-rule (2), the following shall be substituted, namely:-

"(2) One complete copy of the electoral roll for each constituency duly authenticated by the District Election Officer (Panchayats) shall be kept at such place and for such period as the State Election Commission may specify."

**8. Amendment of rule 28.**—In rule 28 of the said rules,-

(a) in sub-rules (5) and (7), for the words and sign "one-third", wherever these occur, the words and sign "one-half" shall be substituted;

(b) for sub-rule (8), the following shall be substituted, namely : -

"(8) The Constituencies reserved for Scheduled Castes and Scheduled Tribes and women belonging to Scheduled Castes and Scheduled Tribes and women belonging to general category on the basis of percentage of population shall be rotated after every five years from the date of first election. At the time of next election, the constituency/constituencies having the next highest percentage of population shall be

reserved for members of Scheduled Castes and Scheduled Tribes including women belonging to Scheduled Castes and Scheduled Tribes and women belonging to general category and so on for subsequent elections:

Provided further that the reservation for a particular category shall not be repeated unless all other constituencies are covered by rotation:

Provided further that the reservation for a particular category shall not be rotated in such a constituency where the population of that category is less than 5% of the total population of that constituency."; and

- (c) after sub-rule (8) so substituted, the following sub-rule (8-A) shall be inserted, namely:-

"(8-A) Notwithstanding anything contained in these rules, the roster of reservation of seats shall operate from the initial stage for the elections to be held after the commencement of the Himachal Pradesh Panchayati Raj (Election) Amendment Rules, 2010 as if the said elections are being conducted for the first time under sub-rule (8) and thereafter, the reservation of seats shall be rotated to different constituencies under this rule."

**9. Insertion of Chapter-V-A.**—After CHAPTER-V of the said rules, the following Chapter shall be inserted, namely:-

#### "CHAPTER-V-A

#### POLL DUTY BALLOT

49-A. *Electors on poll duty entitled to vote.*—Subject to their fulfilling the requirements hereinafter specified, the electors who are on poll duty within the same block shall be entitled to vote at an election of Panchayat.

49-B. *Intimation by voters on Poll Duty.*—An elector on poll duty within the same Block, who wishes to vote at an election shall apply in Form-28A to the Returning Officer for the Panchayat so as to reach him at least seven days or such shorter period as the State Election Commission may allow before the date of poll; and if the Returning Officer is satisfied that the applicant is an elector on poll duty, he shall issue him Poll Duty Ballots, each to be used for the election of member, Up-Pradhan, Pradhan of Gram Panchayat, Member of Panchayat Samiti and Member of Zila Parishad.

49-C. *Form of ballot paper.*—The ballot papers to be issued to the electors on Poll Duty within the same Block shall be same as are issued to other electors of the concerned Panchayat.

49-D. *Issue of ballot paper.* (1) The Poll Duty Ballot Papers shall be delivered to such voter by the Returning Officer for the Gram Panchayat personally together with,-

- (a) two Declaration forms in Form-28B (one for Gram Panchayat and other for Panchayat Samiti and Zila Parishad);
- (b) five covers in Form-28C (one for each ballot paper);
- (c) two large cover addressed to the Returning Officer in Form-28D (one for Gram Panchayat and other for Panchayat Samiti and Zila Parishad); and



- (d) instructions for the guidance of the elector in Form 28-E.
- (2) The Returning Officer for the Gram Panchayat shall at the same time-
- record on the counterfoil of the ballot paper the electoral roll number of the elector as entered in the marked copy of the electoral roll;
  - mark the name of the elector in the marked copy of the electoral roll to indicate that a ballot paper has been issued to him, without however recording therein the serial number of the ballot paper issued to that elector; and
  - ensure that the elector is not allowed to vote at a polling station.
- (3) Before any ballot paper is issued to an elector on election duty at an election, the serial number of the ballot paper shall be effectively concealed in such a manner as the State Election Commission may direct.
- (4) After ballot papers have been issued to all the electors on poll duty, the Returning Officer for the Gram Panchayat shall seal in a packet the marked copy of the electoral roll and record on the packet a brief description of its contents and the date on which it is sealed.
- (5) The Returning Officer for the Gram Panchayat shall also seal in a separate packet the counterfoils of the ballot papers issued to electors on poll duty and record on the packet a brief description of its contents and the date on which it has been sealed.

49-E. *Recording of Vote.*- (1) An elector who has received Poll Duty Ballot Papers and desires to vote shall record his vote on the ballot paper in accordance with the directions contained in Form-28-E and then enclose each ballot paper in separate cover in Form-28C.

(2) The elector shall sign the declaration in Form-28B in the presence of Returning Officer of the Panchayat or such officer as may be notified in this behalf by the State Election Commission.

49-F. *Return of ballot paper.*- (1) After an elector has recorded his vote and made his declaration under rule 49-E, he shall return the ballot paper and declaration to the Returning Officer for the Gram Panchayat or such officer as may be notified in this behalf by the State Election Commission within such time as may be fixed and in accordance with the instructions communicated to him in Form-28E.

(2) If any cover containing a poll duty ballot paper is received by the Returning Officer after the expiry of the time fixed in sub-rule (1) he shall note thereon the date and time of its receipt and shall keep all such covers together in a separate packet.

(3) The Returning Officer for Gram Panchayat or such officer as may be notified in this behalf by the State Election Commission shall ensure that all covers containing poll duty ballot papers received by him are delivered to-

- the Assistant Returning Officer for Gram Panchayat of the concerned Gram Panchayat in the case of election of Gram Panchayat;
- the Returning Officer of the concerned Panchayat Samiti in the case of election of members of Panchayat Samiti at the time of counting of votes; and

- (c) the Returning Officer of the concerned Zila Parishad in the case of election of members of Zila Parishad at the time of counting of votes."

**10. Insertion of rule 73-A.**—After rule 73 of the said rules, the following rule shall be inserted, namely:-

**"73-A. Counting of votes received through poll duty ballot papers.-**

(1) The Returning Officer shall at the first instance deal with the poll duty ballot papers in the manner hereinafter provided.

(2) No cover in Form-28D received by the Returning Officer after the expiry of the time fixed in this behalf shall be opened and no vote contained in such a cover shall be counted.

(3) The other covers shall be opened one after another and as each cover is opened, the Returning Officer shall first scrutinize the declaration in Form-28B contained therein and if the said declaration is not found, or has not been duly signed and attested, or is otherwise substantially defective, or if the serial number of the ballot paper as entered in it differs from the serial number endorsed on the cover in Form-28C, that cover shall not be opened, and after making an appropriate endorsement thereon, the Returning Officer shall reject the ballot paper contained therein.

(4) Each cover so endorsed and the declaration received with it shall be replaced in the cover in Form-28D and all such covers in Form-28D shall be kept in a separate packet which shall be sealed and on which shall be recorded the name of the constituency, the date of counting and a brief description of its content.

(5) The Returning Officer shall then place all the declarations in Form-28B which he has found to be in order in a separate packet which shall be sealed before any cover in Form-28C is opened and on which shall be recorded the particulars referred to in sub-rule (4).

(6) The covers in Form-28D not already dealt with under the foregoing provisions of this rule shall then be opened one after another and the Returning Officer shall scrutinize each ballot paper and decide the validity of the vote recorded thereon.

(7) A poll duty ballot paper shall be rejected-

- (a) if it bears any mark other than mark to record the vote or writing by which the elector can be identified; or
- (b) if no vote is recorded thereon; or
- (c) if votes are recorded in favour of more candidates than one; or
- (d) if it is a spurious ballot paper; or
- (e) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established; or
- (f) if it is not returned in the cover sent along with it to the elector by the Returning Officer.

(8) A vote recorded on a poll duty ballot paper shall be rejected if the mark indicating the vote is placed on the ballot paper in such a manner as to make it doubtful to which candidate the vote has been recorded.

(9) A vote recorded on a poll duty ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the ballot paper is marked.

(10) The Returning Officer shall count all the valid votes recorded in favour of each candidate and record the total thereof in the result sheet in-

- (a) Form-32 in the case of member of Gram Panchayats;
- (b) Form-34 in the case of Pradhan/Up Pradhan;
- (c) Form-36 in the case of member of Panchayat Samiti ; and
- (d) Form-38 in the case of member of Zila Parishad, and announce the same.

(11) All the valid ballot papers and the rejected ballot papers shall be separately bundled and kept together in a packet which shall be sealed with the seals of the Returning Officer and the candidates or their election agents or counting agents, if they desire to affix their seals thereon, and on the packet so sealed the name of the constituency, the date of counting and a brief description of its contents shall be recorded."

**11. Amendment of rule 75.**—In rule 75 of the said rules, after clause (vi), the following proviso shall be added, namely:-

“Provided that the declaration of results on Forms 33, 35, 37 and 39 shall be made only after a reasonable opportunity for exercise of right to recount has been given under rule 79 to the candidate or his election agent or his counting agent.”.

**12. Amendment of rule 78.**—In rule 78 of the said rules, in sub-rule (2), after the words "rules", the figure and sign "75," shall be inserted.

**13. Substitution of rule 79.**—For rule 79 of the said rules, the following shall be substituted, namely:-

*"79. Recount of votes.*- (1) After the completion of the counting and preparation of result sheet under rule 75, the District Election Officer (Panchayat) or Returning Officer, as the case may be, or any other Officer authorised by him shall announce the particulars of the result sheet.

(2) After such announcement has been made, a candidate or, in his absence, his election agent or any of his counting agent may apply in writing to the District Election Officer (Panchayat) or Returning Officer, as the case may be, or any other Officer authorised by him in this behalf for a recount of all or any of the ballot papers already counted stating the grounds on which he demands such recount:

Provided that if no application for recount is received within reasonable time the result shall be declared in accordance with the provisions of clauses (v) and (vi) of rule 75.

(3) On an application for recount under sub-rule(2), the District Election Officer (Panchayat) or Returning Officer, as the case may be, or other officer authorised by him in this behalf shall decide the matter and may allow the application in whole or in part or may reject it if it appears to him to be frivolous or unreasonable:

Provided that every decision of the District Election Officer (Panchayat) or Returning Officer, as the case may be, or any other Officer authorised by him shall be in writing and contain the reasons therefor.

(4) If the District Election Officer (Panchayat) or Returning Officer, as the case may be, or any other officer authorised by him in this behalf, decides under sub-rule (3) to allow an application either in whole or in part, then he shall-

- (a) count the ballot papers again in accordance with his decision;
- (b) amend the result sheet to the extent necessary after such recount; and
- (c) announce the amendment so made by him.

(5) After the total number of votes polled in favour of each candidate has been announced under sub-rule (4), the District Election Officer (Panchayat) or Returning Officer, as the case may be, or such other officer authorised by him, shall complete and sign the result sheet and no application for a recount shall be entertained thereafter."

**14. Amendment of rule 84.**—For rule 84 of the said rules, the following shall be substituted, namely:-

"84. *Disposal of Election Papers.*- The election papers and packets referred to in rules 61, 62, 67 and 83 shall be retained for a period of ninety days from the date of publication of results in the Official Gazette under rule 124 of the Himachal Pradesh Panchayati Raj (General) Rules, 1997 and shall thereafter be destroyed subject to any direction to the contrary given by the State Government or by the State Election Commission or by a Competent Court or pending legal proceedings."

**15. Amendment of rule 85.**—In rule 85 of the said rules,-

- (a) in sub-rule (6), for the words "oath or affirmation of allegiance under section 127 of the Act is administered or made", the words "completion of quorum" shall be substituted; and
- (b) in sub-rule (13), for the words and brackets "put a cross (X)", the words "mark the ballot paper by putting the seal provided for the purpose" shall be substituted.

**16. Amendment of rule 86.**—In rule 86 of the said rules,-

- (a) in sub-rule (6), for the words "oath or affirmation of allegiance under section 127 of the Act is administered or made", the words "completion of quorum" shall be substituted; and
- (b) in sub-rule (13), for the words and brackets "put a cross (X)", the words "mark the ballot paper by putting the seal provided for the purpose" shall be substituted.

**17. Amendment of rule 87.**—In rule 87 of the said rules,-

- (a) in sub-rules (5) and (7), for the words and sign "one-third", wherever these occur, the words and sign "one-half" shall be substituted;
- (b) in sub-rule (8), the brackets and words "(and the office earlier reserved shall be kept open to the members of the general category)" shall be deleted and after the existing proviso, the following proviso shall be added, namely : -

"Provided further that the reservation for a particular category shall not be rotated in such a Gram Sabha where the population of that category is less than 5% of the total population of that Gram Sabha."; and

- (c) after sub-rule (8), the following sub-rule shall be inserted, namely:-

"(8-A) Notwithstanding anything contained in these rules, the roster of reservation of offices shall operate from the initial stage for the elections to be held after the commencement of the Himachal Pradesh Panchayati Raj (Election) Amendment Rules, 2010 as if the said elections are being conducted for the first time under sub-rule (8) and thereafter, the reservation of offices shall be rotated to different Gram Sabhas under this rule."

**18. Amendment of rule 88.**—In rule 88 of the said rules,-

- (d) in sub-rules (5) and (7), for the words and sign "one-third", wherever these occur, the words and sign "one-half" shall be substituted;

- (a) in sub-rule (8), the brackets and words "(and the office earlier reserved shall be kept open to the members of the general category)" shall be deleted and after the existing proviso, the following proviso shall be added, namely : -

"Provided further that the reservation for a particular category shall not be rotated in such a Panchayat Samiti where the population of that category is less than 5% of the total population of that Panchayat Samiti."; and

- (b) after sub-rule (8), the following sub-rule shall be inserted, namely:-

"(8-A) Notwithstanding anything contained in these rules, the roster of reservation of offices shall operate from the initial stage for the elections to be held after the commencement of the Himachal Pradesh Panchayati Raj (Election) Amendment Rules, 2010 as if the said elections are being conducted for the first time under sub-rule (8) and thereafter, the reservation of offices shall be rotated to different Panchayat Samitis under this rule."

**19. Amendment of rule 89.**—In rule 89 of the said rules,-

- (a) in sub-rules (5) and (7), for the words and sign "one-third", wherever these occur, the words and sign "one-half" shall be substituted;

- (b) in sub-rule (8), the brackets and words "(and the office earlier reserved shall be kept open to the members of the general category)" shall be deleted and after the existing proviso, the following proviso shall be added, namely : -

"Provided further that the reservation for a particular category shall not be rotated in such a Zila Parishad where the population of that category is less than 5% of the total population of that Zila Parishad."; and

- (c) after sub-rule (8), the following sub rules shall be inserted, namely:-

"(8-A) Notwithstanding anything contained in these rules, the roster of reservation of offices shall operate from the initial stage for the elections to be held after the

commencement of the Himachal Pradesh Panchayati Raj (Election) Amendment Rules, 2010 as if the said elections are being conducted for the first time under sub-rule (8) and thereafter, the reservation of offices shall be rotated to different Zila Parishads under this rule."

**20. Amendment of Form-11, Form-12 and Form-13.**—In Form-11, Form-12 and Form-13 appended to the said rules, for the signs, words and figure ".....day of 19....", the signs, words and figure ".....day of 20...." shall be substituted.

**21. Substitution of Form-15.**—For Form-15 appended to the said rules, the following shall be substituted, namely :-

"FORM-15  
[See rule 21 (1)]

#### NOTICE OF FINAL PUBLICATION OF ELECTORAL ROLL

It is hereby notified for public information that the additions/deletions and corrections ordered by the Revising Authority/Appellate Authority to the draft electoral roll for Constituency No..... (Constituency) of Gram Panchayat/Panchayat Samiti/ Zila Parishad..... has been incorporated in the said draft roll or list of such amendments has been prepared in accordance with the Himachal Pradesh Panchayati Raj (Election) Rules, 1994 and a copy of the electoral roll so corrected alongwith list of amendments has been published finally.

Registration Officer.

Place .....

Date .....

**22. Insertion of Form-28A, Form-28B, Form-28C, Form-28D and Form-28E.**—After Form-28 appended to the said rules, the following Form-28A, Form-28B, Form-28C, Form-28D and Form-28E, shall be added, namely:-

"FORM-28A  
[See rule 49-B]

#### LETTER OF INTIMATION TO RETURNING OFFICER

To

The Returning Officer,  
Panchayat.....,  
Development Block.....  
District.....(H.P.)

Sir,

I am a voter on election duty within the same Block and my name is entered at Sr. No..... of the electoral roll for ward No..... of Gram Panchayat.....Panchayat Samiti..... Zila Parishad .....

I intend to cast my vote at the ensuing elections to the said Panchayats from ward No..... of Gram Panchayat.....

Yours faithfully,

Place.....

Date.....

## FORM-28B

[See rules 49-D(1) (a), 49-E (2) and 73-A (3) &amp; (6)]

## DECLARATION BY ELECTOR

*Election to the.....**(This side is to be used only when the elector signs the declaration himself)*

I hereby declare that I am the elector to whom the poll duty ballot paper bearing serial number.....has been issued at the above election.

Signature of elector.

Date.....

Address.....

*Attestation of signature*

The above declaration has been signed in my presence by.....(elector) who is personally known to me/has been identified to my satisfaction by.....(identifier) who is personally known to me.

Signature of Attesting Officer.

Signature of identifier, if any.....

Designation.....

Address.....

Date.....

## FORM-28C

[See rules 49-D(1)(b) and 73-A (5)&amp;(6)]

## COVER FOR POLL DUTY BALLOT PAPER

(Put only one Ballot Paper)

A.

NOT TO BE OPENED

BEFORE COUNTING

\*Election of .....(Name of office of  
Panchayat for which elections are to be held)  
from..... Constituency.

POLL DUTY BALLOT PAPER

Serial number of ballot paper.....

\*Appropriate particulars of the election to be inserted here.

## FORM-28D

[See rules 49-E(1)(c) and 73-A(5)]

## LARGE COVER FOR POLL DUTY BALLOT PAPERS

B.

ELECTION-IMMEDIATE  
POLL DUTY BALLOT PAPER  
COVER NOT TO BE OPENED  
BEFORE COUNTING

To

The Returning Officer

For election of .....(Name of office of  
Panchayat for which elections are to be held)

from..... \* Constituency.

Signature .....

of sender .....

\*Returning Officer to insert here the name of the appropriate Constituency of the Gram Panchayat.

## FORM-28E

[See rules 49-E(1)(d) and 49-G(1)]

## INSTRUCTIONS FOR GUIDANCE OF ELECTORS

*(To be used at an election to the Panchayats)*

Election to the\* .....from the.....

The persons whose names are printed on the ballot paper sent herewith are candidates at the above election. Record your vote by placing clearly a mark opposite the name of the candidate to whom you wish to cast your vote.

The mark should be so placed as to indicate clearly and beyond doubt to which candidate you are casting your vote. If the mark is so placed as to make it doubtful to which candidate you have cast your vote, your vote will be invalid.

The number of members to be elected is one. Please remember that you have only one vote. Accordingly you should not vote for more than one candidate. If you do so, your ballot paper will be rejected.

Do not put your signature or write any word or mark any mark, sign or writing whatsoever on the ballot paper other than the mark required to record your vote.

After you have recorded your vote on the ballot paper, place the ballot paper in the smaller cover marked 'A' sent herewith. Close the cover and secure it by seal or otherwise.

You may then sign the declaration in Form 28-B.

After your declaration has been signed and your signature has been attested, place the declaration in Form 28-D as also the smaller cover marked 'A' containing the ballot paper in the larger cover marked 'B'. After closing the larger cover, deliver it to the Returning Officer or the Officer authorized in this behalf by the State Election Commission personally.



You have to give full signature in the space provided on the cover marked 'B'.

\* Appropriate particulars of the election, to be inserted here.

You must ensure that the cover is delivered to the Returning Officer or the Officer authorized in this behalf by the State Election Commission before\*\*.....  
\*\*on..... Please note that —

- (i) if you fail to get your declaration attested or certified in the manner indicated above, your ballot paper will be rejected; and
- (ii) if the cover reaches the Returning Officer or the Officer authorized in this behalf by the State Election Commission after\*\*.....on the\*\*.....  
.....your vote will not be counted.

\*

\*(Here specify the hour and date fixed for the commencement of counting of votes).

**23. Amendment of Form-33, Form-37, Form-39 and Form-43.—**23. In Form-33, Form-37, Form-39 and Form-43 appended to the said rules, for the signs, words and figure ".....day of 19....", the signs, words and figure ".....day of 20...." shall be substituted.

By order,  
Sd/-  
Secretary (Panchayati Raj).

### LABOUR AND EMPLOYMENT DEPARTMENT (AWARDS)

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 511/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.5.2009

H.P. Shri Achhar Pal S/o Shri Chingu Ram, R/o Village Chhater, P.O. Bairi Brang, Tehsil Sarkaghat, Distt. Mandi, .. Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. .. Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

The following reference was received for adjudication from the appropriate Government:

*"Whether retrenchment of services of Shri Achhar Pal S/o Shri Chingu Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"*

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on January 1, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on January 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947..."*

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of "seniority of workers" some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the "case/seniority" the true position came to notice, retrenchment notices were issued to the "above juniors", who were also "surplus to the requirement". Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? .. *OPP*
2. Whether the petition is not maintainable, as alleged .. *OPR*
3. Whether the petition suffers from the vice of delay and laches .. *OPR*
4. Whether the petitioner is guilty of suppressio veri. .. *OPR*
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. .. *OPR*
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1: Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent *w.e.f.* July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

10. The parties pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. ....

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen*.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case..."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 299, 284, 356, 365, 273, 310 and 176 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively. 16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

"25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on February 7, 1999. He in paragraph 2 of his statement of claim inter alia averred:

*"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of „first come, last go“....."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement....."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 *"that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department."* In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred *"that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members...."* There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No. 95/2000 decided on 26.8.2004) wherein it was inter alia held:

*"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).*

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 615/07-2083, dated 17.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated May 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 103/2006  
Date of Institution : 30.8.2006  
Date of decision : 8.4.2009

Shri Ail Ram S/o Shri Nand Ram Village Prasangar, P.O. Madana, Sub Tehsil Sainj, District Kullu, H.P.

. . Petitioner.

#### Versus

1. The Conservator of Forest, National Park, Shamshi Sainj Kullu, H.P.
2. The Divisional Forest Officer, Great Himalayan National Park, Division Shamshi, District Kullu, H.P.

. . Respondents.

For the Petitioner : Sh. L.B. Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Ail Ram S/o Shri Nand Ram workman by the (1) Conservator of Forests, National Park Division Shamshi, District Kullu, H.P. (2) Divisional Forest Officer, Great Himalayan National Park, Division Shamshi, District Kullu, H.P. w.e.f. 11.8.2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondents as daily waged Beldar in Shamshi Division of Great Himalayan National Park in November, 1997 and worked as such upto October, 2003. In the month of October, 2003, his services, according to him, were orally terminated by the respondents without giving him an opportunity of being heard. Aggrieved by the termination of his services, he preferred before the H.P. Administrative Tribunal an application (OA No. 403/2003), which was dismissed as withdrawn on July 21, 2004. On August 23, 2004, he for the redressal of his grievance approached the Labour Inspector, Kullu, who referred the matter to the Labour Commissioner, Himachal Pradesh. The latter in turn referred the dispute for adjudication to this Court. Claiming to have worked for more than 240 days in each calendar year of his

employment, the petitioner alleged that "similar situated person are still working with the respondents department." At the time of his removal from service no notice, according to him, was given to him nor was he paid any retrenchment compensation. He therefore sought a direction to the respondents to reinstate him in the same capacity as in which he was working at the time his services were dispensed with. He also prayed for a direction to the respondents to count the period of time between his dis-engagement and re-engagement towards his seniority. Besides, he prayed for the grant of full back-wages and other consequential benefits including seniority etc.

2. Disputing the petitioner's claim of having been retrenched unlawfully, the respondents in their joint reply averred that he was engaged as daily rated casual labourer on muster roll basis in the Wildlife Range Sainj just for a period of 27 days in September, 1997. Thereafter he in November, 1997 and during the period from January, 1998 to November, 1999 was engaged as Eco Volunteer under the Eco Volunteer Scheme on monthly wages of Rs.500/-. During the period from February, 2000 to August, 2003, except the months of August, October and November, 2002 and the period from April, 2003 to July, 2003, he, according to the respondents, worked as daily waged casual worker. His services, it is further averred, were never terminated, but he had himself abandoned the job after August, 2003. In view of his having abandoned the job on his own, his claim petition, according to the respondents, is not maintainable and he is not entitled to the relief he prayed for.

3. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the dis-engagement from the service of the claimant by the respondents is proper and justified? . . . OPR.
2. Relief.

4. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : No

Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

5. The mandays chart Ex. RW1/A adduced in evidence by the respondents is demonstrative of the petitioner having been engaged as daily waged worker in Shamshi Division of Great Himalayan National Park in September, 1997 and his having worked for 27 days in that month. This document is also indicative of the petitioner having worked as daily waged worker in Shamshi Division of Great Himalayan National Park for 303, 337, 281 and 165 days in the years 2000, 2001, 2002 and 2003 respectively. The petitioner's counsel alleges that his client's services were orally terminated by the respondents in August, 2003 without giving him one month's notice and paying retrenchment compensation as envisaged under Section 25F of the Industrial Disputes Act, 1947 (the Act, for short).

6. Per contra, the Ld. Dy. District Attorney appearing for the respondents argues that the petitioner having abandoned the job on his own in August, 2003, the respondents cannot be said to have violated any provision of the Act. I am not impressed with this contention, for the materials on record are not sufficient to establish the respondents "claim that the petitioner had abandoned the job on his own in August, 2003. The respondents to establish this claim of theirs ought to have adduced in evidence atleast the muster roll for the month of August, 2003 wherein the petitioner may have been shown to have absented from work, but they failed so to do. It is therefore difficult to accept the respondents' claim.

7. But even if the respondents claim as to the petitioner's alleged absence from work is assumed to be true, the plea of abandonment of job can still not be said to have been established, because absence from duty indubitably amounts to misconduct, which calls for holding of a domestic inquiry by the employer in accordance with the principles of natural justice. In D.K. Yadav Vs. JMA Industries Limited, 1993(1) Services Law Judgments page 221, the Hon'ble Apex Court inter alia observed:

"Even executive authorities, which taken administrative action involving any deprivation of or restriction on inherent fundamental rights of citizen, must take care to see that justice is not only done. But manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness, or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice."



8. The Hon'ble Supreme Court further held as under:

“It is well settled law that right to life enshrined under Art. 21 of Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequence of jeopardising not only his livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of a workman fair play requires that a reasonable opportunity to put forth his case is given and in case of any misconduct i.e. absence from duty or unauthorised absence from duty, domestic enquiry be conducted complying with the principle of natural justice.”

9. In case the petitioner had absented from work, the respondents ought to have conducted a domestic inquiry in accordance with the principles of natural justice, but they failed so to do. Their claim that the petitioner had abandoned the job on his own in August, 2003, therefore, deserves to be negated on this count as well.

10. In view of the materials on record and what has been held above, I have no hesitation in holding that the services of the petitioner were orally terminated by the respondents on August 11, 2003.

11. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

“25-F. *Conditions precedent to retrenchment of workman.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

12. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

“25B. Definition of continuous service. For the purposes of this Chapter,-

(3) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(4) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (b) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case....”

(c) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- a. ninety-five days, in the case of workman employed below ground in a mine; and
- b. one hundred and twenty days, in any other case.....”

13. The mandays chart Ex. RW1/A is demonstrative of the petitioner having worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. There is nothing to

suggest that the respondents had at the time of termination of the services of the petitioner given him one month's notice and paid retrenchment compensation as envisaged under Section 25F of the Act. In terminating the services of the petitioner, the respondents therefore violated the said provisions. So, the termination by the respondents of the petitioner's services on August 11, 2003 is not justified. The issue under discussion is accordingly held in favour of the petitioner and against the respondents.

#### RELIEF

14. Judged in the light of my findings on the foregoing issue, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated by the respondents. Besides, he is held entitled to continuity of service from the date of his unlawful retrenchment (August 11, 2003). He is, however, held not entitled to any back-wages, because there is no whisper in his pleadings and evidence that he was not gainfully employed anywhere after the termination of his services. The respondents are directed to re-engage him within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 8th day of April, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

---

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref. No. : 334/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Smt. Anita Devi w/o Shri Nek Ram, R/o Village Raseheda, P.O. Khoda, Tehsil Sarkaghat, District Mandi,  
H.P. . . *Petitioner.*

#### *Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Anita Devi W/o Shri Nek Ram, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on January 1, 1999, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of “Last Come First Go” as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner

and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on January 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947..."*

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors., who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent *w.e.f.* July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (iv) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (v) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (vi) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.--**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (c) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the Period Of Notice Has Expired, Or The Workman Has Been Paid In Lieu Of Such Notice, Wages For The Period Of The Notice; And
- (d) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

- (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner.s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner.s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner.s retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in

lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (5) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (6) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (d) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case...."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent.s reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 276, 342, 336, 343, 322, 287 and 166 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on January 4, 1999. She in paragraph 2 of her statement of claim inter alia averred:

"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of first come, last go....."

18. In reply, the respondent in paragraph 2 inter alia averred:

"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement...."

19. This reply of the respondent lends assurance only to the petitioner.s allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the

petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members...." There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1813 dated April 11, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 30, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and

continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 340/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Smt. Beena Devi W/o Shri Pardeep Kumar, R/o Village & P.O. Nalyana, Tehsil Sarkaghat, District Mandi,  
H.P. . . . *Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Smt. Beena Devi W/o Shri Pardeep Kumar, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on March 3, 1999, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-



1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on March 3, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947..."*

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No  
Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent *w.e.f.* July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (vii) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (viii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (ix) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (e) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

- (f) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service.** For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(e) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 282, 351, 348, 334, 359, 298 and 157 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on March 4, 1999. She in paragraph 2 of her statement of claim inter alia averred:

*"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of first come, last go...."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement...."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is

thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members;" There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

*"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).*

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1842 dated 11.4.07. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 30, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner

within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 386/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Smt. Bimla Devi W/o Shri Shanker Dass, R/o Village & P.O. Longani, Tehsil Sarkaghat, District Mandi, H.P.  
.. *Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. .. *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

1. The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Smt. Bimla Devi W/o Shri Shanker Dass, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on March 1, 1999, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner.s consequent retrenchment was unlawful and unjustified. Another count on which the petitioner.s retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent.s claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on March 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947..."*

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also,

there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (x) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (xi) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (xii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

**9. The question that arises for determination is:**--Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.**--(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (g) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (h) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the



workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service.** For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (f) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case...."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 299, 352, 361, 343, 353, 302 and 176 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on March 1, 1999. She in paragraph 2 of her statement of claim inter alia averred:

*"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of first come, last go....."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement..."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members." There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

*"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).*

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1968 dated April 12, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 22, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 478/2008

Date of Institution : 13.6.2008

Date of decision : 30.5.2009

Smt. Bimla Devi w/o Shri Puran Chand, R/o Village Langana, P.O. Madi, Tehsil Sarkaghat, District Mandi,  
H.P. . . *Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Smt. Bimla Devi W/o Shri Puran Chand, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on February 1, 1999, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)-4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on February 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having

been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947...."*

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority. the true position came to notice, retrenchment notices were issued to the above juniors., who were also surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 :Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve

months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (xiii) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (xiv) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (xv) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (j) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(11) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(12) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(g) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case..."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 123, 363, 358, 346, 355, 286 and 169 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found

with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on June 5, 1999. She in paragraph 2 of her statement of claim inter alia averred:

*"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of first come, last go...."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement...."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. PW1/B and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members...." There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy. D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was



considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

*"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).*

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 665/07-1759, dated April 4, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated April 11, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent.s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

(S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 524/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.5.2009

Shri Chaman Lal S/o Shri Gian Chand, R/o Village Sherpur, P.O. Madi, Tehsil Sarkaghat, Distt. Mandi, H.P.  
.. Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Shri Chaman Lal S/o Shri Gian Chand, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 8.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on January 1, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)-4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on January, 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of*

*the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947..."*

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors., who were also surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (xvi) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (xvii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (xviii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.--** (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service.** For the purposes of this Chapter,-

(13) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(14) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (h) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case...."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 343, 353, 365, 365, 361, 302 and 179 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on January 1, 1999. He in paragraph 2 of his statement of claim inter alia averred:

*"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working*

*with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of first come, last go....."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement...."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members...." There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

*"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC))."*

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No. LO/MZ/IV/ID/45/2005 & 660/07-2085, dated 17.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court

under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated May 26, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy. D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records. Announced in the open Court today this 30th day of May, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 237/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Shri Chaman Lal S/o Shri Narpal Ram, R/o Village Kaloga, P.O. Mandup, Tehsil Sarkaghat, Distt. Mandi,  
H.P. . . . Petitioner.

#### Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . . . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

*"Whether retrenchment of services of Shri Chaman Lal S/o Shri Narpal Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount*

*of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"*

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on January 1, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on January 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947...."*

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of .seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the .case/seniority. the true position came to notice, retrenchment notices were issued to the .above juniors., who were also .surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.



5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (xix) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (xx) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (xxi) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties. pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner.s services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (m) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (n) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner.s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner.s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner.s retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(15) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(16) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (i) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case...."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 317, 362, 359, 357, 357, 301 and 172 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.—***Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on January 2, 1999. He in paragraph 2 of his statement of claim inter alia averred:

*"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of first come, last go...."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement..."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members..." There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

*"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).*

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2005 dated 13.4.07. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 19, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy. D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 236/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Shri Dhani Ram S/o Shri Jai Ram, R/o Village Huckel, P.O. Longani, Tehsil Sarkaghat, Distt. Mandi, H.P.

. . Petitioner

#### Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Shri Dhani Ram S/o Shri Jai Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on December 1, 1998, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner

and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on December 1, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947..."

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority. the true position came to notice, retrenchment notices were issued to the above juniors., who were also surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (xxii) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (xxiii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (xxiv) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen.—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner.s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner.s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner.s retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in



lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(j) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 50, 344, 347, 351, 356, 347, 305 and 161 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

*"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on November 11, 1998. He in paragraph 2 of his statement of claim inter alia averred:

*"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of first come, last go...."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement...."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen,

however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members...." There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No. 2116 dated 18.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 12, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 479/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Smt. Gangi Devi W/o Shri Roshan Lal, R/o Village & P.O. Khoda, Tehsil Sarkaghat, District Mandi, H.P.  
.. Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. .. Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Smt. Gangi Devi W/o Shri Roshan Lal, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on November 17, 1998, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there

was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on November 17, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947..."*

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of .seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the .case/seniority. the true position came to notice, retrenchment notices were issued to the .above juniors., who were also .surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

- |   |     |
|---|-----|
| 1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? | OPP |
| 2. Whether the petition is not maintainable, as alleged.  | OPR |
| 3. Whether the petition suffers from the vice of delay and laches.  | OPR |
| 4. Whether the petitioner is guilty of suppressio veri.   |     |
| 5. Whether the petitioner is estopped from filing the claim petition by her act and conduct.  | OPR |
| 6. Relief.  |     |

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No

Issue 5 : No

Relief : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (q) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (r) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(19) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(20) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (k) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 40, 226, 303, 329, 322, 321, 290 and 176 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on November 21, 1998. She in paragraph 2 of her statement of claim inter alia averred:

*"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of first come, last go...."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement...."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members...." There being no rebuttal to this

deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1737 dated March 31, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected.

The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).



**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 431/2008

Date of Institution : 13.6.2008

Date of decision : 30.5.2009

Smt. Giano Devi W/o Shri Roop Lal, R/o Village Kot, P.O. Tihra, Tehsil Sarkaghat, District Mandi, H.P.

. . . *Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Smt. Giano Devi W/o Shri Roop Lal, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on November 18, 1998, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on November 18, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified

as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner.s contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947..."*

4. The petitioner.s allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of .seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the .case/seniority. the true position came to notice, retrenchment notices were issued to the .above juniors., who were also .surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner.s allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in

which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.--**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (3) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case..."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 37, 306, 362, 342, 303, 329, 207 and 167 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found

with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on November 18, 1998. She in paragraph 2 of her statement of claim inter alia averred:

*"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of first come, last go....."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement...."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members;". There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she

prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

*"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).*

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 659/07-1776, dated April 4, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)ID/2007-Mandi dated April 3, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent.s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 349/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Smt. Godda Devi W/o Shri Narain Singh, R/o Village Ghanala, P.O. Sandhole, Tehsil Sarkaghat, District Mandi, H.P. . . . . . Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Smt. Godda Devi W/o Shri Narain Singh, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on May 5, 1999, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on May 5, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of

the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947..."

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"



9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.--**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of

HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service.**-- For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(m) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 159, 356, 334, 351, 364, 245 and 160 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on March 3, 1999. She in paragraph 2 of her statement of claim inter alia averred:

*"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of first come, last go...."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement..."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members." There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy. D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 501-07/1721, dated March 31, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated April 30, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 540/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.4.2009

Shri Hem Singh S/o Shri Relu Ram, Village Kumharda, Post Office Pehad, Tehsil Sarkaghat, Distt. Mandi,  
H.P. . . . Petitioner.

#### Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . . . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Ram Lal Thakur, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Shri Hem Singh S/o Shri Relu Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?"***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on November 11, 1998, and that he worked as such in Dharampur Division of HPPWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days in each calendar year upto July, 2005, the petitioner further averred that the notice whereby his services were dispensed with was not legal, because no prior permission of the appropriate Government was obtained for his retrenchment. In terminating the services of the petitioner, the respondent, it is further averred, had violated the provisions of "Last Come First Go" as envisaged under section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because the workmen namely Ravinder Kumar, Hari Singh, Sher Singh, Roshani Devi and Davinder Kumar, who were junior to the petitioner, were retained in service at the time of termination of his services. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on November 11, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating his services by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri. OPR
5. Relief.
6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Relief : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

## ISSUE 1

7. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

8. The petitioner's counsel contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

9. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's counsel's aforementioned contention deserves acceptance and is accepted.

11. The petitioner's counsel further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the counsel, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority

for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

12. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**"(g) "employer" means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

13. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the "employer" in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

14. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

15. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,-**

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case...."

16. The petitioner in his affidavit Ex. PW1/A claimed to have worked for 240 days in each calendar year (from 1998 to July 8, 2005) and completed as many days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been disputed during his cross-examination by the respondent deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 48, 344, 358, 359, 362, 358, 303 and 166 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month.s notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

17. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".



18. The petitioner in paragraph 2 of his statement of claim alleged that the workmen namely Ravinder Kumar, Hari Singh, Sher Singh, Roshani Devi and Davinder Kumar, who were junior to him, were retained in service by the respondent at the time his services were dispensed with. In reply, the respondent in paragraph 2 inter alia averred:

*"It is submitted that some junior daily wages workers are working in Dharampur Division due to non-availability of seniority of workers were transferred from other Division/Sub-Divn. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Ravinder Kumar, Roshani Devi and Davinder Kumar, who were junior to him, were still working with the respondent. It is also alleged that another workman namely Shashi Kant s/o Bihari Lal, who was also junior to the petitioner, was retained in service and the respondent thus violated the principle of "Last Come First Go". This allegation, to my thinking, rings true in view of the materials on record. In the seniority list of the retrenched Beldars Ex. PW1/C, the petitioner is shown to have been engaged as daily waged Beldar on 4.11.1998. Shashi Lal (Shashi Kant) S/o Bihari Lal, whose name figures at serial no.646 in seniority list of such daily waged Beldars in Dharampur Division of HPPWD as are stated to have completed 8 years of service upto 31.3.2008 Ex. PW1/B, is shown to have been engaged on 6.4.1999. So, he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched.

21. Further, some other workmen whose names figure at serial nos. 618 to 645 and 652 in the seniority list Ex. PW1/B, having been engaged as daily waged Beldar after the petitioner's employment (4.11.1998) were decidedly junior to him. The said document is indicative of the said workmen having been retained in service at the time the petitioner's services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of section 25G of the Act.

22. The petitioner's counsel contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

23. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

24. The petitioner in paragraph 9 of his affidavit Ex. PW1/A averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

25. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

26. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

27. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/48/05-4274, dated 28.6.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2007-Mandi dated June 2, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

28. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of April, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

---

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 565/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.4.2009

Shri Hem Singh S/o Shri Nek Ram, R/o Village Kumharda, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P.  
.. Petitione.

#### Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. .. Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Ram Lal Thakur, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Shri Hem Singh S/o Shri Nek Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?"***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on November 11, 1998, and that he worked as such in Dharampur Division of HPPWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days in each calendar year upto July, 2005, the petitioner further averred that the notice whereby his services were dispensed with was not legal, because no prior permission of the appropriate Government was obtained for his retrenchment. In terminating the services of the petitioner, the respondent, it is further averred, had violated the provisions of "Last Come First Go" as envisaged under section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because the workmen namely Ravinder Kumar, Hari Singh, Sher Singh, Roshani Devi and Davinder Kumar, who were junior to the petitioner, were retained in service at the time of termination of his services. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on November 11, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating his services by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri. OPR
5. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Relief : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

## ISSUE 1

7. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

8. The petitioner's counsel contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

9. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's counsel's aforementioned contention deserves acceptance and is accepted.

11. The petitioner's counsel further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the counsel, being the head of HPPWD (B&R) Central Zone,

Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.--**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

12. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**"(g) "employer" means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

13. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the "employer" in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of

law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

14. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

15. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case...."

16. The petitioner in his affidavit Ex. PW1/A claimed to have worked for 240 days in each calendar year (from 1998 to July 8, 2005) and completed as many days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been disputed during his cross-examination by the respondent deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 48, 342, 357, 363, 357, 337, 303 and 162 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

17. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the

workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

18. The petitioner in paragraph 2 of his statement of claim alleged that the workmen namely Ravinder Kumar, Hari Singh, Sher Singh, Roshani Devi and Davinder Kumar, who were junior to him, were retained in service by the respondent at the time his services were dispensed with. In reply, the respondent in paragraph 2 inter alia averred:

***"It is submitted that some junior daily wages workers are working in Dharampur Division due to non-availability of seniority of workers were transferred from other Division/Sub-Divn. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."***

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Ravinder Kumar, Roshani Devi and Davinder Kumar, who were junior to him, were still working with the respondent. It is also alleged that another workman namely Shashi Kant s/o Bihari Lal, who was also junior to the petitioner, was retained in service and the respondent thus violated the principle of "Last Come First Go". This allegation, to my thinking, rings true in view of the materials on record. In the seniority list of the retrenched Beldars Ex. PW1/C, the petitioner is shown to have been engaged as daily waged Beldar on 4.11.1998. Shashi Lal (Shashi Kant) S/o Bihari Lal, whose name figures at serial no.646 in seniority list of such daily waged Beldars in Dharampur Division of HPPWD as are stated to have completed 8 years of service upto 31.3.2008 Ex. PW1/B, is shown to have been engaged on 6.4.1999. So, he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched.

21. Further, some other workmen whose names figure at serial nos. 618 to 645 and 652 in the seniority list Ex. PW1/B, having been engaged as daily waged Beldar after the petitioner's employment (4.11.1998) were decidedly junior to him. The said document is indicative of the said workmen having been retained in service at the time the petitioner's services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of section 25G of the Act.

22. The petitioner's counsel contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

23. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

24. The petitioner in paragraph 9 of his affidavit Ex. PW1/A averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

25. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

26. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he

prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

*"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).*

27. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.4276 dated 28.6.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated June 27, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy. D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

28. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of April, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 359/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Shri Inder Pal S/o Shri Dahalu Ram, R/o Village Gaddidhar, P.O. Garoddu, Tehsil Sarkaghat, Distt. Mandi,  
H.P. . . . . Petitioner.

#### Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . . . . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.



For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Shri Inder Pal S/o Shri Dahalu Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on December 15, 1998, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on December 15, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947..."*

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors., who were also surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (ii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.--**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service.--**For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(3) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case..."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent.s reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 15, 314, 346, 344, 333, 329, 280 and 160 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on December 16, 1998. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go....."

18. In reply, the respondent in paragraph 2 inter alia averred:

***"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement..."***

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members....." There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

***"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).***

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 512/07-1716 dated 31.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated April 30, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by

his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 34/2005  
Date of Institution : 21.3.2005  
Date of decision : 29.4.2009

Sh. Ishwar Dass S/o Suraj Mani, Village Nayatla, P.O. Rajwari, Tehsil, Sadar, Distt. Mandi, H.P. . . *Petitioner.*

*Versus*

Executive Engineer, HPPWD, Electrical Division, Mandi, H.P.

. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. B.C. Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

*"Whether the termination of services of Shri Ishwar Dass S/o Sh. Suraj Mani, Ex. Daily wages beldar by the Executive Engineer, HPPWD (Electrical) Division, Mandi, H.P. w.e.f. April, 2001 without complying the provisions of the Industrial Disputes Act, 1947 and whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits Shri Ishwar Dass is entitled to?"*

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar in Electrical Sub Division HPPWD, Sundernagar on February 18, 1998 and worked as such upto April, 2001. Claiming to have worked for 240 days in each calendar year upto April, 2001, the petitioner further averred that thereafter his services were terminated by the Assistant Engineer, Electrical Sub Division HPPWD, Sundernagar without giving him notice and paying retrenchment compensation as envisaged under Section 25F of the Industrial Disputes Act, 1947 (the Act, for short). In terminating the services of the petitioner, the respondent not only violated the said provisions but also violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act, because he at the time the services of the petitioner were dispensed with, retained in service certain workers who were junior to him (petitioner). The petitioner therefore prayed for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were terminated. He also prayed for a direction to the respondent to fix his seniority and give him other consequential benefits.

3. Refuting the petitioner's allegation of violation of the provisions of Sections 25F and 25G of the Act, the respondent in his reply averred that he (petitioner) was engaged as daily waged Electrical Beldar in Electrical Sub Division HPPWD, Sundernagar for seasonal works of the department in April, 1993, and that in that year, he worked only for 17 days. In 1998, seasonal works again arose and the petitioner was re-engaged as Electrical Beldar for such works in Electrical Sub Division HPPWD, Sundernagar on February 18, 1998 and worked upto March, 2001 as per availability of seasonal works of the department. Refuting the petitioner's claim of having completed 240 days in each calendar year and during the period of 12 calendar months preceding the date of his retrenchment, the respondent further averred that in view of the petitioner's services having been terminated on close of the seasonal works, his case did not fall within the ambit of Section 25B of the Act. The petitioner's allegation that at the time of termination of his services certain workers junior to him were retained in service, is also repudiated by the respondent. Since the petitioner's services were terminated on close of the seasonal work for which he was engaged, no provision of the Act, according to the respondent, can be said to have been violated and his claim is therefore liable to be rejected. Another count on which the petitioner's claim, according to the respondent, merits rejection is the filing of the claim petition beyond the period of limitation.

4. On the pleadings of the parties, my Predecessor-in-office framed the following issues for determination:

1. Whether the services of the petitioner were terminated by the respondent w.e.f. April, 2001 without complying with the provisions of Industrial Disputes Act, in an improper and unjustified manner. OPP
2. If issue 1 is proved in the affirmative, what service benefits the petitioner is entitled to? OPP
3. Whether the petitioner was engaged on daily wages basis as Beldar for seasonal works by the department. If so, its effect? OPR
4. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes  
 Issue 2 : He is entitled to reinstatement, continuity of service and 50% back-wages.  
 Issue 3 : No  
 Relief : The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### ISSUES 1 & 3

6. Both these issues being inter-linked are taken up together.

7. The petitioner's claim of having been engaged by the respondent as daily waged Beldar in Electrical Sub Division HPPWD, Sundernagar on February 18, 1998 is not disputed by the respondent. What is disputed by the respondent is his allegation of having been retrenched in violation of the provisions of Sections 25F and 25G of the Act. It is contended that the petitioner having been engaged as daily waged Electrical Beldar for seasonal works of the department and his services having been dispensed with on such works coming to an end, no provision of the Act can be said to have been violated. But this contention, to my thinking, does not appear to be tenable, for no such documentary evidence has been led by the respondent as may lend assurance to his claim. The ocular evidence led by him is also not indicative of the petitioner having been engaged as against seasonal works. The respondent's contention therefore merits rejection and is rejected.

8. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**"25F. Conditions precedent to retrenchment of workmen--**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days. average [pay for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

9. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25 (B). Definition of continuous service.—**For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-
  - (i) ninety-five days, in the case of workman employed below ground in a mine; and
  - (ii) one hundred and twenty days, in any other case...."

10. The mandays chart Ex. RW1/A adduced in evidence by the respondent is indicative of the petitioner having worked for 196 days during the period of 12 calendar months preceding the date of termination of his services. But this position notwithstanding, the petitioner can safely be held to have been in continuous service for a period of one year, or say, for 240 days during the period of 12 calendar months preceding the date of his retrenchment in view of what has been deposed to by the respondent.s witness Sh. R.K. Arora, Executive Engineer, Electrical Division HPPWD Mandi. The said witness in his cross-examination as RW1 inter alia maintained:

*"It is correct that the petitioner was engaged as electrical Beldar on May 15, 1993. It is correct that he was re-engaged as electrical Beldar in our department on February 18, 1998, and that he continuously worked as such upto March 18, 2001. He continued to work as and when muster roll was issued...."*

11. This deposition is indicative of the petitioner having worked only when muster roll was issued. During such periods of time as for which no muster roll was issued, the petitioner had to remain without work. The intermittent cessation of work was decidedly not due to any fault on the part of the petitioner. He can therefore safely be held to have been in continuous service for one year preceding the date of his retrenchment in view of the abovementioned provisions of Sub Section (1) of Section 25B of the Act. There being nothing to suggest that before terminating the services of the petitioner, the respondent had given him one month.s notice and paid retrenchment compensation as envisaged under Section 25F of the Act. In dispensing with the services of the petitioner, the respondent is thus proved to have violated the said provisions.



12. But in terminating the services of the petitioner, not only did the respondent violate the provisions of Section 25F but also violated the principle of "Last Come First Go" as envisaged under Section 25G of the Act, which provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

13. The seniority list Ex. PA adduced in evidence by the petitioner is indicative of eighteen Electrical Beldars being junior to the petitioner. Of these workers, two namely Murari Lal and Nikka Ram, who figure at serial nos. 33 and 34 respectively in the said seniority list, are working in the department even today, vide the respondent's witness R.K. Arora's cross-examination as RW1. The said witness, however, maintained that Murari Lal and Nikka Ram were also removed from service in 2001, and that they were re-engaged in obedience to Court orders. Whether or not they were dis-engaged on the same day as the petitioner, is anybody's guess. The respondent to establish his claim that Murari Lal and Nikka Ram were re-engaged in obedience to Court orders, ought to have adduced documentary evidence, but he failed so to do. It is therefore difficult to accept his claim. Murari Lal and Nikka Ram, who were indubitably junior to the petitioner, having been retained in service at the time the petitioner was retrenched, the respondent can safely be held to have violated the aforereproduced provisions of Section 25G of the Act. As a result, both the issues on hand are held in favour of the petitioner and against the respondent.

## ISSUE 2

14. In view of what has been held under the foregoing issues 1 and 3, the petitioner is decidedly entitled to re-engagement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service on the date of his unlawful retrenchment.

15. The petitioner in paragraph 3 of his statement of claim inter alia averred that he did not work anywhere "during the said period of dis-engagement". He in his affidavit also testified that he had not "worked anywhere since the date of his unlawful retrenchment till date". There being no rebuttal to this deposition of his, I am disposed to hold that besides the aforementioned benefits he is entitled to 50% back-wages as well. The issue under discussion is held accordingly.

## RELIEF

16. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. The petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is held entitled to 50% back-wages and continuity of service from the date of his unlawful retrenchment (March, 2001). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 29th day of April, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala (H.P.).

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 537/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.5.2009

Shri Jai Pal S/o Shri Sohan Singh, R/o Village Lalana, P.O. Marhi, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Jai Pal S/o Shri Sohan Singh, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on January 9, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of “Last Come First Go” as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on January 9, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible “to continue the same strength of labour” due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*“The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision*

*of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947..."*

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of „seniority of workers" some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority" the true position came to notice, retrenchment notices were issued to the „above juniors", who were also „surplus to the requirement". Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP.
2. Whether the petition is not maintainable, as alleged. OPR .
3. Whether the petition suffers from the vice of delay and laches. OPR.
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR .
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

ISSUE 1 :

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act.

What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

“25L (a) “*industrial establishment*” means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an „industrial establishment” within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

“(m) “factory” means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

10. The parties” pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner”s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months” notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner’s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner’s retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically

disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 244, 363, 315, 362, 355, 305 and 160 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

*"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on February 3, 1999. He in paragraph 2 of his statement of claim inter alia averred: *"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of „first come, last go “....."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement....."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 *"that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department."* In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred *"that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members...."* There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2 :

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3 :

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon<sup>ble</sup> High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/82/06-2152, dated 23.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated May 28, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4 :

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5 :

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 536/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.5.2009

Shri Jiwan Kumar S/o Shri Lakshman, R/o Village Hiyun, P.O. Nalyana, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Jiwan Kumar S/o Shri Lakshman, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on November 16, 1998, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of “Last Come First Go” as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on November 16, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible “to continue the same strength of labour” due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:



*“The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947...”*

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of „seniority of workers" some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority" the true position came to notice, retrenchment notices were issued to the „above juniors", who were also „surplus to the requirement". Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1 :

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression “industrial establishment” is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

“25L (a) “industrial establishment” means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an „industrial establishment” within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

“(m) “factory” means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

10. The parties” pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner”s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months” notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of

retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner’s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner’s retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: “25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case....”

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent’s reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars

Ex. PW1/C, which is demonstrative of the petitioner having worked for 37, 335, 362, 363, 363, 365, 272 and 176 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

*"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on November 17, 1998. He in paragraph 2 of his statement of claim inter alia averred:

*"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of „first come, last go “....."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement....."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 *"that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department."* In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred *"that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members...."* There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2 :

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3 :

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon<sup>ble</sup> High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005& 384/07- 2063, dated 16.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated May 28, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4 :

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5 :

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

**RELIEF**

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

**Ref. No. : 497/2008**  
**Date of Institution : 14.7.2008**  
**Date of decision : 30.5.2009**

Shri Jiwan Kumar S/o Shri Saju Ram, R/o Village Sandehara, P.O. Khodda, Tehsil Sarkaghat, Distt. Mandi,  
H.P. ..Petitioner.

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Shri Jiwan Kumar S/o Shri Saju Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on December 1, 1998, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of “Last Come First Go” as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on December 1, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible “to continue the same strength of labour” due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*“The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision*

*of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947..."*

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of „seniority of workers" some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority" the true position came to notice, retrenchment notices were issued to the „above juniors", who were also „surplus to the requirement". Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP.
2. Whether the petition is not maintainable, as alleged. OPR .
3. Whether the petition suffers from the vice of delay and laches. OPR.
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR .
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

ISSUE 1 :

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

“25L (a) “*industrial establishment*” means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an „industrial establishment” within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

“(m) “factory” means any premises including the precincts thereof-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

10. The parties” pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months” notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”



11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case...."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 31, 294, 343, 346, 360, 355, 303 and 178 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

"25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on December 1, 1998. He in paragraph 2 of his statement of claim inter alia averred: *"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of „first come, last go “....."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement....."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 *"that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department."* In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred *"that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members...."* There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2 :

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3 :

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon<sup>ble</sup> High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2039 dated 16.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 26, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4 :

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5 :

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 414/2008

Date of Institution : 13.6.2008

Date of decision : 30.5.2009

Shri Jiwan Lal S/o Shri Jawahar Lal, R/o Village Barog, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Shri Jiwan Lal S/o Shri Jawahar Lal, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on January 1, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of “Last Come First Go” as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on January 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible “to continue the same strength of labour” due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified

as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months" notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner"s contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947..."*

4. The petitioner"s allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner"s allegation of violation of the provisions of Section 25G of the Act, the respondent"s contention is that due to non-availability of „seniority of workers" some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority" the true position came to notice, retrenchment notices were issued to the „above juniors", who were also „surplus to the requirement". Claiming the petitioner"s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP.
2. Whether the petition is not maintainable, as alleged. OPR.
3. Whether the petition suffers from the vice of delay and laches. OPR.
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR.
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 :	Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
Issue 2 :	No.
Issue 3 :	No
Issue 4 :	No
Issue 5 :	No
Relief. :	The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

ISSUE 1 :

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no

denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an „industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (ii) the workman has been given three months" notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (jj) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case....”

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 354, 299, 285, 295, 280, 269 and 178 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

“25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on January 1, 1999. He in paragraph 2 of his statement of claim inter alia averred:

*“That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of „first come, last go “.....”*

18. In reply, the respondent in paragraph 2 inter alia averred:

*“That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement.....”*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 “that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department.” In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.



21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members....*" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### ISSUE 2 :

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3 :

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon<sup>ble</sup> High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/45/ 2005 & 333/07-1545, dated 3/2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated April 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4 :

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5 :

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a

period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 27/2004  
Date of Institution : 30.1.2004  
Date of decision : 29.4.2009

Shri Joginder Singh S/o Shri Tulsi Ram, Village Badoti, P.O. Gangloh, Tehsil Jhandutta, District Bilaspur,  
H.P. ..Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D., Division, Ghumarwin, District Bilaspur, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S.Sippy, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

“Whether the termination of services of Shri Joginder Singh S/o Shri Tulsi Ram, daily wages beldar by the Executive Engineer, H.P.P.W.D., Division, Ghumarwin, District Bilaspur, H.P. w.e.f. 31.10.1998 without complying the provisions Industrial Disputes Act, 1947 and whereas junior to him are retained as alleged by the workman is proper and justified. If not, what relief of service benefits the above aggrieved workman is entitled to?”

2. On notice, the petitioner filed his statement wherein he averred that he was engaged by the respondent (Executive Engineer, HPPWD Division, Ghumarwin, District Bilaspur, H.P.) as daily waged Beldar in Berthin Sub Division of HPPWD Division, Ghumarwin on December 1, 1995, and that he worked as such upto November 1, 1998. Thereafter his services, according to him, were orally dispensed with by the respondent. Aggrieved, the petitioner laid challenge to the oral termination of his services by preferring before the Hon"ble H.P. Administrative Tribunal an application (OA No. 3007/1999). By its order dated April 18, 2001, the said Tribunal allowed the application, set aside the impugned order and directed the respondent to re-engage the petitioner in the same capacity as in which he was working at the time his services were dispensed with. The respondent in obedience to the said direction of the Tribunal re-engaged the petitioner, but laid challenge to the Tribunal"s orders by preferring before the Hon"ble High Court of Himachal Pradesh a Civil Writ Petition. The Hon"ble High Court allowed the respondent"s petition and set aside the Tribunal"s orders dated April 18, 2001. On the strength of the Hon"ble High Court"s orders the respondent again terminated the services of the petitioner. Claiming to have worked for more than 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner averred that in dispensing with his services, the respondent had violated the provisions of Section 25F of the Industrial Disputes Act, 1947 (the Act, for short) because no notice as envisaged under these provisions was given to him nor was he paid retrenchment compensation. Besides, the respondent violated the provisions of Section 25G of the Act, because he at the time of termination of his services retained in service the workmen namely Nikka Ram, Raj Kumar, Anil Kumar and Raghu Nath, who were junior to him. The petitioner therefore prayed for a direction to the respondent to re-engage him in the same capacity as in which he was working at the time of termination of his services. He also prayed for the grant of all consequential benefits.

3. The respondent in his reply averred that the petitioner was engaged as daily waged Beldar in the month of December, 1995, and that he worked as such upto October, 1998. Thereafter his services were terminated for want of

funds and on completion of the work against which he was engaged. Disputing the petitioner's claim of having worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services, the respondent averred that he (petitioner) had worked for 26, 195, 61 and 144 days during the years 1995, 1996, 1997 and 1998 respectively, and that in view of his having not completed 240 days during the period of 12 calendar months preceding the date of his retrenchment, there was no violation of the provisions of Section 25F of the Act. As for the allegation of violation of provisions of Section 25G of the Act, the respondent's contention is that the workers namely Nikka Ram, Raj Kumar, Anil Kumar and Raghu Nath, who are claimed to be junior to the petitioner, were also removed from service and later re-engaged in obedience to the orders of the Hon"ble H.P. Administrative Tribunal, Shimla. In view of these workmen having been engaged in compliance with the directions of the said Tribunal, the respondent cannot be said to have violated the provisions of Section 25G of the Act. The respondent therefore prayed for rejection of the petitioner's claim.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the services of the petitioner were terminated by the respondent w.e.f. 31.10.1998 without comply with the provisions of Industrial Disputes Act is improper and unjustified, as alleged? OPP.
2. If issue no.1 is proved in the affirmative, what service benefits the petitioner is entitled to? OPP.
3. Whether the services of the petitioner were terminated due to lack of funds as well as due to completion of the work, as alleged. OPR .
4. Relief.

6. My Ld. Predecessor-in-office dismissed the claim petition inter alia observing:

"Lastly, a perusal of paragraph 3 of the statement of claim discloses that, the re-engagement of the claimant has been under the orders of the H.P. Administrative Tribunal which was set aside by the Hon"ble High Court of H.P., by way of orders rendered in a civil writ petition filed, by, the employees against the orders of H.P. Administrative Tribunal which had ordered the reinstatement of the claimant. In pursuance to the setting aside of the orders of the H.P. Administrative Tribunal, the respondent ordered the retrenchment of the claimant which as has been effected in pursuance to the order of this Hon"ble High Court of H.P. this Tribunal has no jurisdiction to interfere in the matter, which has been conclusively decided by the Hon"ble High Court of H.P."

7. Aggrieved, the petitioner laid challenge to the aforementioned award of this Court by preferring a Civil Writ Petition (CWP No. 1292/2006) before the Hon"ble High Court of Himachal Pradesh. By its order dated December 20, 2007, the Hon"ble High Court allowed the petition set aside the award dated January 17, 2006 of this Court and remanded the matter to this Court for decision afresh.

8. For the reasons to be recorded hereinafter, my findings on the aforementioned issues are as under:

Issue 1 : Yes  
 Issue 2 : He is entitled to reinstatement and continuity of service.  
 Issue 3 : No  
 Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

ISSUES 1 & 3 :

9. These issues being inter-linked are taken up together.

10. In the respondent's pleadings as also evidence, services of the petitioner are stated to have been terminated "due to the lack of funds as well as completion of work for which he was engaged". But the work against

which the petitioner was allegedly engaged, is not specified in the respondent's pleadings and evidence. Whether or not the respondent had, at the time he took the petitioner into his employ, told him that he was being engaged as against a specific work, is anybody's guess. It is therefore difficult to hold that the petitioner was engaged as against a specific work. But even if the petitioner is assumed to have been engaged as against a specific work, there is no plausible material to show that his services were dispensed with simultaneously with the completion of the work. The respondent's claim that services of the petitioner were terminated "due to lack of funds as well as due to completion of the work for which he was engaged" cannot therefore be accepted.

11. But the petitioner's allegation, on the other hand, that in terminating his services, the respondent had violated the provisions of Section 25G of the Act, also, to my thinking, does not appear to be tenable in view of the materials on record. Section 25G of the Act reads:

*"25-G. Procedure for retrenchment.-* Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

12. The petitioner's allegation is that the respondent had at the time of termination of his services retained in service certain workmen namely Nikka Ram, Raj Kumar, Anil Kumar and Raghu Nath, who were junior to him. Although there is no plausible material to lend assurance to the petitioner's claim that these workmen were junior to him, even if this claim is assumed to be true, his allegation of violation of the provisions of Section 25G of the Act does not appear to be holding water. He in his statement of claim claimed to have worked upto November 1, 1998. His services, according to him, were terminated after this date. But the services of the aforementioned workers (Nikka Ram, Raj Kumar, Anil Kumar and Raghu Nath) who are claimed to be junior to the petitioner, were dispensed with in August, 1998, October, 1998, October 31, 1998 and July 31, 1998 respectively, vide the Hon'ble H.P. Administrative Tribunal's orders dated January 5, 1999, August 30, 1999, September 6, 1999 and November 5, 1999 in O.A. Nos. 1919/98, 825/99, 721/99 and 2162/99 (Annexures R-2, R-3, R-4 and R-5 respectively) that is, on or before the date of termination of the services of the petitioner. The petitioner's allegation that the respondent had at the time his services were dispensed with retained in service the said workmen, is nothing but falsity.

13. However, the petitioner's allegation that in terminating his services, the respondent had violated the provisions of Section 25F of the Act, appears to be tenable. The said Section reads:

*"25F. Conditions precedent to retrenchment of workmen-* No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

***"25 (B). Definition of continuous service.- For the purposes of this Chapter,-***

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-
  - (i) ninety-five days, in the case of workman employed below ground in a mine; and
  - (ii) one hundred and twenty days, in any other case....”

15. The mandays chart prepared by the Assistant Engineer, HP. PWD Sub Division, Berthin, is indicative of the petitioner having worked for 174 days during the period of 12 calendar months preceding the date of termination of his services. But this position notwithstanding, the petitioner can safely be held to have been in continuous service for a period of one year, or say, for 240 days during the period of 12 calendar months preceding the date of his retrenchment, because no muster roll was issued in the months of March, April, May and June, 1998, vide the aforementioned mandays chart. It goes without saying that the petitioner could work only if muster roll was issued. During such period of time as for which no muster roll was issued, the petitioner had to remain without work. The cessation of work for the aforementioned period (March, 1998 to June, 1998) was decidedly not due to any fault on part of the petitioner. In view of this position and his actual working days (174), he can safely be held to have been in continuous service for one year preceding the date of his retrenchment in view of the aforementioned provisions of Sub Section (1) of Section 25B of the Act. There being nothing to suggest that before terminating the services of the petitioner, the respondent had given him one month's notice and paid retrenchment compensation as envisaged under Section 25F of the Act. In dispensing with the services of the petitioner, the respondent is thus proved to have violated the said provisions. As a result, while issue 1 is held in the affirmative, issue 3 is held in the negative.

#### ISSUE 2 :

16. In view of what has been held under the foregoing issues 1 and 3, the petitioner is decidedly entitled to re-engagement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his unlawful retrenchment. However, he is not entitled to back-wages, because his pleadings and evidence are non-existent in such averments as may show that he was not gainfully employed after his retrenchment. The issue under discussion is held accordingly.

#### RELIEF

17. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. The petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is held entitled to continuity of service from the date of his unlawful retrenchment in October, 1998. He is, however, held not entitled to any back-wages. The respondent is directed to reinstate the petitioner within a period of 90 days from today failing which he (petitioner) shall be entitled to 25% back-wages with effect from the date of his unlawful retrenchment. The said 25% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The reference is answered accordingly. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 29th day of April, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 505/2008

Date of Institution : 14.7.2008

Date of decision : 30.5.2009

Shri Kamal Chand S/o Shri Tegu Ram, R/o Village Gawela, P.O. Sandhole, Tehsil Sarkaghat, Distt. Mandi, H. P.

..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Kamal Chand S/o Shri Tegu Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on April 27, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of “Last Come First Go” as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on April 27, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible “to continue the same strength of labour” due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified

as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months" notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner"s contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947..."*

4. The petitioner"s allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner"s allegation of violation of the provisions of Section 25G of the Act, the respondent"s contention is that due to non-availability of „seniority of workers" some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority" the true position came to notice, retrenchment notices were issued to the „above juniors", who were also „surplus to the requirement". Claiming the petitioner"s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP.
2. Whether the petition is not maintainable, as alleged. OPR.
3. Whether the petition suffers from the vice of delay and laches. OPR.
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR.
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

ISSUE 1 :

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no

denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an „industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months" notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.



(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 191, 355, 365, 364, 329, 293 and 172 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

“25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on March 7, 1999. He in paragraph 2 of his statement of claim inter alia averred:

*“That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of „first come, last go “.....”*

18. In reply, the respondent in paragraph 2 inter alia averred:

*“That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement.....”*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 *“that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department.”* In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred *“that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members....”* There being no rebuttal to this deposition of

his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### ISSUE 2 :

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3 :

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon<sup>ble</sup> High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1981 dated 13.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 26, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4 :

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5 :

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S. S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref. No. : 356/2008

Date of Institution : 13.6.2008

Date of decision : 30.5.2009

Smt. Kanni Devi W/o Shri Beli Ram, R/o Village Diyothi, P.O. Sandhole, Tehsil Sarkaghat, District Mandi, H.P.

...Petitioner

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Smt. Kanni Devi W/o Shri Beli Ram, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on January 8, 1999, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on January 8, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified

as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947.*

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority. the true position came to notice, retrenchment notices were issued to the above juniors., who were also surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri. OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR
6. Relief.
7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But

this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(mm) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(nn) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment,

may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service.--**For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 215, 357, 316, 339, 357, 300 and 170 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

*"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on May 7, 1999. She in paragraph 2 of her statement of claim inter alia averred:

*"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of first come, last go..."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement..."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. PW1/B and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members." There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.



## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

*"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).*

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 395/07-1827, dated April 11, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated April 30, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 516/2008

Date of Institution : 14.7.2008

Date of decision : 30.5.2009

Shri Khem Singh S/o Shri Narayan Singh, R/o Village Thati, P.O. Kot, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Shri Khem Singh S/o Shri Narayan Singh, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on November 13, 1998, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on November 13, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having

been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner.s contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

***"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947.."***

4. The petitioner.s allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of .seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the .case/seniority. the true position came to notice, retrenchment notices were issued to the .above juniors., who were also .surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri. OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief.
7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1: Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner.s allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the

Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-  
but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.--**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service.--**For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(w) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case.."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars

Ex. PW1/C, which is demonstrative of the petitioner having worked for 46, 354, 366, 365, 365, 363, 307 and 170 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.--** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on November 15, 1998. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go...."

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement.."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

*"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).*

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2035 dated 16.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 26, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 486/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.5.2009

Shri Khayali Ram S/o Shri Hachhu Ram, Village Jandwal, P.O. Giyun, Tehsil Sarkaghat, Distt. Mandi, H.P.

...Petitioner

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

1. reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Shri Khayali Ram S/o Shri Hachhu Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on November 9, 1998, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on November 9, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of*



*the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."*

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors., who were also surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief.
7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1: Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.--**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer,

HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.--** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service.--**For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(x) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case..."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 44, 268, 257, 251, 274, 268, 271 and 160 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of

any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on November 4, 1998. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go..."

18. In reply, the respondent in paragraph 2 inter alia averred:

***"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement.."***

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

***"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to***

*the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).*

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005& 617/07-2074, dated 17.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated May 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent.s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref. No. : 412/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.5.2009

Shri Krishan Chand S/o Shri Prabh Dayal, R/o Village Brahel, P.O. Kamlha, Tehsil Sarkaghat, District Mandi,  
H.P.

...Petitioner

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
 For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Shri Krishan Kumar S/o Shri Prabh Dayal, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on June 1, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)-4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on June 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947.."*

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri. OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief.
7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1: Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to

my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-  
but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the



petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.--** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service.** --For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
  - (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (y) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case.."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 147, 357, 299, 320, 330, 268 and 170 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on June 2, 1999. He in paragraph 2 of his statement of claim inter alia averred:

*"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of first come, last go..."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement.."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. PW1/B and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

*"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).*

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer

referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 330/07-1534, dated 19.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated April 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref. No. : 416/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Smt. Kunti Devi W/o Shri Ganga Ram, R/o Village & P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P.  
..Petitioner

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Smt. Kunti Devi W/o Shri Ganga Ram, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on April 23, 1999, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on April 23, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."*

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the

reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1: Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-  
but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties. pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner.s services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.--**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and  
(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner.s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner.s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner.s retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.--** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service.-**For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case.."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 240, 330, 343, 329, 342, 288 and 170 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on March 1, 1999. She in paragraph 2 of her statement of claim inter alia averred:

*"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of first come, last go.."*

18. In reply, the respondent in paragraph 2 inter alia averred:

*"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement.."*

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members;" There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

*"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).*

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 &627/07-1766, dated April 4, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated April 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned



contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 219/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Shri Lal Singh S/o Mangat Ram, R/o Village Putlifuld, P.O. Mandup, Tehsil Sarkaghat, Distt. Mandi, H.P.

...Petitioner

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

*"Whether retrenchment of services of Shri Lal Singh S/o Shri Mangat Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"*

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on November 11, 1998, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on November 11, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."*

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP.
  2. Whether the petition is not maintainable, as alleged. . . .OPR.
  3. Whether the petition suffers from the vice of delay and laches. . . .OPR.
  4. Whether the petitioner is guilty of suppressio veri.
  5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . . .OPR.
  6. Relief.
  7. For the reasons to be recorded hereinafter, my findings on these issues are as under:
- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief : The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so

carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner.s services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(2) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner.s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner.s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner.s retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 326, 358, 367, 365, 361, 299 and 172 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on January 1, 1999. He in paragraph 2 of his statement of claim inter alia averred:

**"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."**

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement.**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 461/07-1984, dated 13.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated May 13, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P

Ref. No. : 439/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Smt. Mahanti Devi W/o Shri Mani Ram, R/o Village Bramfald, P.O. Mandol, Tehsil Sarkaghat, District  
Mandi, H.P. .Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. .Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Smt. Mahanti Devi W/o Shri Mani Ram, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on November 11, 1998, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer,

HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on November 11, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of .seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the .case/seniority. the true position came to notice, retrenchment notices were issued to the .above juniors., who were also .surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . . .OPR
3. Whether the petition suffers from the vice of delay and laches. . . .OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. . . .OPR



6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.  
 Issue 2 : No.  
 Issue 3 : No  
 Issue 4 : No  
 Issue 5 : No  
 Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner.s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner.s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner.s retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 103, 144, 345, 358, 359, 295 and 175 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on June 4, 1999. She in paragraph 2 of her statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. PW1/B and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi

Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members." There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1953 dated April 12, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 11, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be

computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref. No. : 564/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.5.2009

Smt. Maina Devi W/o Shri Hari Singh, R/o Village Kumaharda, P.O. Pehad, Tehsil Sarkaghat, District Mandi,  
H.P. .Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. .Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Smt. Maina Devi W/o Shri Hari Singh, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on December 1, 1998, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as

specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on December 1, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . . .OPR
3. Whether the petition suffers from the vice of delay and laches. . . .OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. . . .OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 :Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

## ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.--**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service.** For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-



- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 29, 302, 338, 328, 312, 326, 299 and 169 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on December 1, 1998. She in paragraph 2 of her statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of

income even to have two square meals per day for her and her family members." There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

#### ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 631/07-1765, dated April 4, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated June 23, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref. No. : 420/2008

Date of Institution : 13.6.2008

Date of decision : 30.5.2009

Smt. Meera Devi W/o Shri Suneel Kumar, R/o Village Banwarkalan, P.O. Dharampur, Tehsil Sarkaghat,  
District Mandi, H.P.

. .Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Smt. Meera Devi W/o Shri Suneel Kumar, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on December 2, 1998, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on December 2, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus

workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority. the true position came to notice, retrenchment notices were issued to the above juniors., who were also surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. . . OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 :Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The

applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 126, 122, 334, 315, 340, 265 and 176 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's

retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on March 3, 1999. She in paragraph 2 of her statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members;". There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 739/07-1965, dated April 12, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated April 22, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 545/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.5.2009

Shri Mehar Chand S/o Shri Mani Ram, R/o Village & P.O. Sari, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Petitioner

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . .Respondent



*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Mehar Chand S/o Shri Mani Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on March 1, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on March 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors., who were also surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . . OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. . . OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . . OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent.s reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 294, 313, 338, 341, 290, 297 and 168 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.--**Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on March 1, 1999. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1980 dated 13.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 28, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 207/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Shri Milap Chand S/o Shri Bhuri Singh, Village Gawela, Post Office Sandhole, Tehsil Sarkaghat, Distt. Mandi, H.P. . . . .Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . . .Respondent.  
*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Milap Chand S/o Shri Bhuri Singh, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above Employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on December 22, 1998, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in

an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP.PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on December 22, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? .OPP

- |    |   |         |
|----|---|---------|
| 2. | Whether the petition is not maintainable, as alleged.                                     | . . OPR |
| 3. | Whether the petition suffers from the vice of delay and laches.                           | . . OPR |
| 4. | Whether the petitioner is guilty of suppressio veri.                                      |         |
| 5. | Whether the petitioner is estopped from filing the claim petition by his act and conduct. | . . OPR |
| 6. | Relief.   |         |
7. For the reasons to be recorded hereinafter, my findings on these issues are as under:
- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such



area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service.--**For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 12, 235, 338, 320, 353, 354, 269 and 166 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.--** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on December 6, 1998. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o

Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members." There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005&402/07-1982, dated 13.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2007-Mandi dated May 13, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 514/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.5.2009

Shri Murari Lal S/o Shri Parma Ram, R/o Village Chowki, P.O. Mandup, Tehsil Sarkaghat, Distt. Mandi, H.P.  
...Petitioner

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.  
...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***"Whether retrenchment of services of Shri Murari Lal S/o Shri Parma Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on May 1, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD

(B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on May 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

*"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."*

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of .seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the .case/seniority. the true position came to notice, retrenchment notices were issued to the .above juniors., who were also .surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR

4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct.

OPR

6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1: Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

#### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner.s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner.s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner.s retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in

writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(gg) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 18, 287, 354, 363, 363, 359, 302 and 166 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on December 9, 1998. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to



the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members." There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2021 dated 13.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and

continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 79/2005  
Date of Institution : 10.6.2005  
Date of decision : 29.4.2009

Shri Nand Lal S/o Sh. Hari Ram, Village Balh Kanhata, P.O. Jamli, Distt, Bilaspur. . .Petitioner.

*Versus*

The Executive Engineer, HPPWD Division No.2, Bilaspur, H.P. . .Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Sunder Singh Sippy, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether the termination of services of Shri Nand Lal s/o Sh. Hari Ram workman by the Executive Engineer, HPPWD No.2, Bilaspur, H.P. w.e.f. 1.7.93 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar in Swarghat Sub Division of HPPWD on April 1, 1976, and that he worked as such upto June 30, 1993. On July 1, 1993, his services, according to him, were orally terminated by the respondent without giving him notice and paying him retrenchment compensation as envisaged under Section 25F of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have served in Horticulture Sub Division during the period from 20.6.1990 to 30.6.1993 and worked for more than 240 days in each completed year of his service, the petitioner further averred that in terminating his services, the respondent had failed to observe the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Besides, the respondent failed to observe the provisions of Section 25H of the Act, because he had after the termination of the petitioner's services taken into his employ the workmen namely Ram Lal, Ravinder, Nanak Chand, Ram Krishan, Nanak Chand, Krishanu Ram, Baldev Ram, Sohan La, Shri Ram, Durga Ram, Roshan Lal, Chet Ram, Gorkhu Ram, Tulsi Ram, Atma Ram, Chhota Ram, Roshan Lal, Banta Ram, Jagat Ram, Rajinder Kumar, Amar Singh, Ranbir Singh, Sukh Dev, Amar Nath, Parkash Chand and Krishnu Ram without giving the petitioner an opportunity to offer himself for re-employment. The petitioner therefore prayed for a direction to the respondent to reinstate him with full back-wages and continuity of service.

3. Disputing the petitioner's claim of having been engaged on April 1, 1976 and retrenched on July 1, 1993, the respondent in his reply inter alia averred that he (petitioner) was in fact engaged as daily waged Beldar on July 21, 1977 and worked as such upto June 14, 1993 in various Sub Divisions. On June 15, 1993, the petitioner, according to the respondent, abandoned the job on his own and did not make any representation to any authority in the department. It was only after a lapse of 10 years that he cooked up a false case of termination of his services. Denying having terminated the services of the petitioner, the respondent further averred that in view of his having himself

abandoned the job, no provision of the Act was violated. Repudiating the petitioner's allegation of non-observance of the principle of "Last Come First Go", the respondent further averred that this principle was being observed by him. As to the petitioner's allegation that certain workmen were engaged after the termination of his services, the respondent averred that "No new workers were recruited in the year 1995, 96 and 1996-97 as alleged". It is also averred that the petitioner is estopped from filing the claim petition by his act and conduct, and that the petition is hopelessly barred by time.

4. On the pleadings of the parties, the following issues were framed for determination by my Ld. Predecessor-in-office:

1. Whether the termination of services of the petitioner w.e.f. 1.7.1993 by the respondent without complying with the provisions of the Industrial Disputes Act is improper and unjustified, as alleged. . .OPP
2. If issue 1 is proved in the affirmative, what service benefits the petitioner is entitled to? . .OPP
3. Whether the petitioner left the job on his own and did not report for duty, as alleged. . .OPR
4. Whether the petition is not maintainable. . .OPR
5. Whether the petitioner is estopped from filing the petition by his act and conduct. . .OPR
6. Whether the petition is barred by limitation. . .OPR
7. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 :	Yes
Issue 2 :	He is entitled to reinstatement and continuity of service.
Issue 3 :	No
Issue 4 :	No
Issue 5 :	No
Issue 6 :	Petition suffers from the vice of delay and laches.
Relief :	The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUES 1 & 3

6. Both these issues being inter-linked are taken up together.

7. The petitioner, according to the respondent, was engaged as daily waged Beldar on July 21, 1977 and worked as such upto June 14, 1993 in various Sub Divisions of HPPWD Division No.2, Bilaspur. Refuting the petitioner's allegation of termination of his services, the respondent averred that he (petitioner) had in fact abandoned the job on June 15, 1993. To buttress this claim of the respondent, the Ld. Dy. D.A. referred to the muster roll for the period from June 1, 1993 to June 30, 1993, wherein the petitioner is marked absent from June 15, 1993 onwards. It is contended that the petitioner having himself absented from work can safely be assumed to have abandoned the job and is therefore not entitled to any relief. I am not impressed with this contention. No doubt in the muster roll aforementioned, the petitioner is marked absent from 15.6.1993 onwards, but the mere factum of his absence from duty cannot be interpreted as abandonment by him of the job. In *Sita Ram vs. Labour Court, Patiala*, and others, reported in *Factories Journal Reports*, Vol. 88, page 516, one of the issues framed by the Labour Court was: Whether the order of termination of services of the workman is justified and in order. The said Court while deciding this issue held that as the workman had absented from duty with effect from January 28, 1988, the management was justified in terminating his services on March 25, 1988. It was concluded that the case of the workman was of abandonment of service and not retrenchment. Having referred to Section 2(oo) of the Act wherein is defined the expression "retrenchment", the Hon.ble High Court of Punjab and Haryana inter alia ruled:

"Absence from duty is not covered by any of the exceptions as enumerated in sub-clauses (a), (b), (bb) and (c). Absence from duty can at the most be held to mean to be a misconduct. The termination of services on the ground of misconduct could not be resorted to without holding an enquiry or complying with the provisions of the Act."

The "absence" simpliciter by itself cannot be equated with abandonment of service. According to the dictionary, "absent" means "not present". It also means not being in a particular place at a certain time. The absence, therefore, means to be absent from specified position and not physically present. Abandoned on the other hand connotes a conscious decision of a person who relinquishes the position held by him. It means complete leaving of things as a final rejection of one's responsibilities. According to the Oxford Dictionary, it means, to let go, give up, renounce, leave off, to cease to hold, use or precise. The meaning of the word "abandoned" depends upon the context in which it, is intended to be used. The Labour Court appears to have completely ignored the settled provisions of law and passed a judgment merely on hypothesis.

8. In D.K. Yadav Vs. JMA Industries Limited, 1993 (1) Services Law Judgments page 221, the Hon.ble Apex Court inter alia observed:

"Even executive authorities, which taken administrative action involving any deprivation of or restriction on inherent fundamental rights of citizen, must take care to see that justice is not only done. But manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness, or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice".

9. The Hon.ble Supreme Court further held as under:

**"It is well settled law that right to life enshrined under Art. 21 of Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequence of jeopardizing not only his livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of a workman fair play requires that a reasonable opportunity to put forth his case is given and in case of any misconduct i.e. absence from duty or unauthorised absence from duty, domestic enquiry be conducted complying with the principle of natural justice."**

10. The petitioner denied having abandoned the job. According to him, his services were terminated by the respondent. But even if the latter's claim as to the petitioner's alleged absence from work is assumed to be true, the plea of abandonment of job can still not be said to have been established, because absence from duty indubitably amounts to misconduct, which calls for holding of a domestic inquiry by the employer in accordance with the principles of natural justice. But the respondent having failed so to do, his claim that the petitioner had abandoned the job on his own on June 15, 1993, deserves to be negated. More so, in view of the respondent's suggestion to the petitioner during his cross-examination as PW1 that he was removed from work in 1993. It therefore stands established on record that the respondent had terminated the services of the petitioner w.e.f. June 15, 1993.

11. The petitioner's authorized representative contends with vehemence that in terminating his client's services, the respondent had violated the provisions of section 25F of the Act. This contention, to my thinking, appears to be tenable in view of the materials on record. Section 25F of the Act reads:

"25F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

12. The petitioner's claim of having worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment appears to be having a ring of truth in view of the seniority list (Annexure R1) which is demonstrative of his having worked for 111, 152, 306, 239.5, 121, 61, 64, 64.5, 24, 133, 280, 303, 293, 304 and 148 days in the years 1977, 1978, 1979, 1980, 1981, 1983, 1984, 1985, 1986, 1988, 1989, 1990, 1991, 1992 and 1993 respectively. There is nothing to suggest that before terminating the services of the petitioner, the respondent had given him one month's notice and paid retrenchment compensation as envisaged under section 25F of the Act. In dispensing with the services of the petitioner, the respondent is thus proved to have violated the said provisions.

13. But in terminating the services of the petitioner, not only did the respondent violate the abovementioned provisions but also violated the provisions of Section 25G of the Act, which provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

14. In his cross-examination as RW1, the respondent's witness Chaman Lal Gupta, then Executive Engineer, HPPWD Division No.2, Bilaspur, categorically admitted the petitioner's suggestion that seventeen workers, who were junior to the petitioner, were still working in the department. The respondent thus on his own showing established it on record that certain workmen junior to the petitioner were retained in service at the time the services of the petitioner were dispensed with. In terminating the services of the petitioner, the respondent is thus proved to have

violated the provisions of section 25G of the Act as well. Both the issues under discussion are accordingly held in favour of the petitioner and against the respondent.

#### ISSUES 2 & 6

15. Both these issues being inter-linked are taken up together.

16. No period of limitation having been prescribed for raising of an industrial dispute by a workman, the petitioner's claim cannot be said to be barred by time. But this observation of mine notwithstanding, the petitioner's claim, to my mind, appears to be suffering from the vice of delay and laches. Denying the respondent's suggestion that he had instituted a case against the department after a lapse of 15 years, the petitioner in his cross-examination as PW1 volunteered to state that he had filed the case against the department in 1997. He, as already observed, was retrenched by the respondent as back as in 1993. There being no explanation for the delay of about 4 years in his raising the industrial dispute in question, his claim decidedly suffers from the vice of delay and laches. In *Naginder Kumar Vs. HPSEB and anr.*, 2008(1) SLJ, 425, our own High Court inter alia observed:

**"It is also well settled by now that the Labour court cannot dismiss the claim on the ground of delay and laches once the same has been referred to it by the state Government. The Labour Court at the most can take into consideration delay, if any, in raising the dispute at the time of granting the relief."**

17. In view of the respondent having been held to have violated the provisions of Sections 25F and 25G of the Act in terminating the services of the petitioner, the latter is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with in June, 1993. Besides, he is entitled to continuity of service from the date of his retrenchment. However, he, to my thinking, is not entitled to any back-wages in view of his claim having been found to be stale. Both the issues under discussion are held accordingly.

#### ISSUE 4

18. In view of what has been held under the foregoing issues, the petition is decidedly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 5

19. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

20. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. The petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is held entitled to continuity of service from the date of termination of his service in 1993. He is, however, held not entitled to back-wages in view of his claim having been found to be stale. The respondent is directed to reinstate the petitioner within a period of 90 days from today failing which he (petitioner) shall be entitled to 25% back-wages with effect from the date of his unlawful retrenchment. The said 25% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The reference is answered accordingly. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 29th day of April, 2009.

By order,  
S.S.SEN.  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 258/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Shri Nihal Chand S/o Shri Bhima Ram, R/o Village & P.O. Kothuwan, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Petitioner.

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

. Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner :

Sh. Suresh Kumar Sharma, Adv.

For the Respondent :

Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Nihal Chand S/o Shri Bhima Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on January 1, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on January 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works**

**Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . . .OPR
3. Whether the petition suffers from the vice of delay and laches. . . .OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . . .OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |  |
|-----------|--|
| Issue 1 : | Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services. |
| Issue 2 : | No.  |
| Issue 3 : | No   |
| Issue 4 : | No   |
| Issue 5 : | No   |
| Relief. : | The petition allowed partly per operative part of the award.   |

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to

my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

- "(m) "factory" means any premises including the precincts thereof-
- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
  - (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties. pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner.s services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner.s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner.s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman,



ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.**-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service.** For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 257, 339, 302, 326, 309, 240 and 168 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.**-Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on February 3, 1999. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1988 dated 13.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 19, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 85/1999  
Date of Institution : 13.4.1999  
Date of decision : 27.4.2009

Shri Nika Ram S/o Sh. Dhani Ram, Vill. Kamli Jarol, Tehsil, Sundernagar, Distt. Mandi, H.P. . .Petitioner

*Versus*

1. The Factory Manager, Fruit Processing Plant, Jarol, Distt. Mandi, H.P.
2. The Managing Director, H.P. Horticulture Produce Marketing and Processing Corporation, Shimla, H.P.
3. B.D. M. Company, Sundernagar, Distt. Mandi, H.P. . .Respondents

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. L.B. Sharma, Adv.  
For the Respondent : Sh. Arvind Kapoor, Adv.

## AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether the termination of services of Sh. Nika Ram, daily waged Beldar, by (1) Factory Manager, Fruit Processing Plant, Jarol, Distt. Mandi; (2) The Managing Director, H.P. Horticulture Produce Marketing and Processing Corporation, Shimla (3) B. D.M. Company, Sundernagar, Distt. Mandi, H.P. w.e.f. 1995 after prolonged service of 13 years by the worker, without any notice, chargesheet, enquiry and without compliance of Section 25F of the Industrial Disputes Act, 1947, besides transferring his services to M/s. B.D.M. Company Sundernagar, Distt. Mandi and retaining junior person in service by ignoring the claim of the worker, is legal and justified. If not, what relief of past service benefits including re-instatement, back wages, seniority and amount of compensation, Sh. Nika Ram is entitled to?"**

2. On notice, the petitioner filed his statement of claim wherein he inter alia averred that he was engaged as daily waged Beldar in the Fruit Processing Plant, Jarol in Sundernagar Tehsil of Mandi district in 1988, and worked as such upto 1995. On account of his having fallen sick, he remained under treatment and could not attend his duties for some days. On getting well he went to join his duties, but was not allowed so to do by the respondent 1 (Factory Manager, Fruit Processing Plant, Jarol). It was only after his repeated requests that he was later allowed to work as unskilled worker, but his seniority was changed and he was issued Card No.26, instead of Card No.12 which he held previously. Claiming to have been engaged again as daily waged Beldar in 1996, the petitioner further averred that he continued to work as such upto March 14, 1998 when his services were suddenly dispensed with by the respondents. In terminating his services, the respondents, according to him, violated the provisions of Section 25F of the Industrial Disputes Act, 1947 (the Act, for short) because no notice as envisaged under these provisions was given to him nor was he paid retrenchment compensation. It is also averred that in 1992, the factory aforementioned was given on lease to B.D.M Company, Sundernagar. At the time of creation of lease, the workers were also transferred to the lessee company. Claiming to have worked for 272 days during the year 1997-1998, the petitioner averred that the factory in question was taken over by the respondent 1. The petitioner further averred:

**"That the applicant remained under treatment from 26.11.97 to 21.12.97 and on account of break of this period the seniority of the applicant was lost by the respondents 1&2 and retained the junior persons namely (1) Saju Ram (2) Paras Ram (3) Hari Singh S/o Dagu Ram, (4) Dagu Ram (5) Babu Ram (6) Amar Singh (7) Jai Chand (8) Roshan Lal (9) Kanshi Ram (10) Roshan Lal (11) Karam Singh (12) Radha Devi (13) Rajni Devi (14) Kamla Devi (15) Dharmi Devi (16) Sheela Devi & (17) Gambhiri Devi. All these persons are junior to the applicant".**

3. On the basis of these averments the petitioner prays for a direction to the respondents to reinstate him and maintain his seniority at serial no. 12. The respondents are also sought to be directed to pay him wages for "intervening period from 15.3.98 till reinstatement".

4. The respondents 1 and 2 in their joint reply inter alia averred that the petitioner along with others was engaged as casual worker "on the basis of seasonal requirement of plant" in 1988, and that he worked as such from July 1988 to 1992. In 1989, he, according to the respondents, had worked for 279 days. On July 28, 1992, services of all the workers including the petitioner were dispensed with for want of work in the plant. On August 20, 1992, the plant was leased out to a private party (M/s. Shivambu International Prop. Shankar Trading Company Ltd.). On March 28, 1994, the lessee engaged all the casual workers, but dispensed with their services after paying them retrenchment compensation. On 31.3.1994, the plant was taken over by the H.P. Horticulture Produce Marketing and Processing Corporation (HPMPC, for short) and "the workers engagement was considered according to their seniority and keeping in view the work load in the plant in the month of July, 1994." But the petitioner did not report for duty during the period from October 25, 1994 to June 14, 1995 nor did he submit any application or medical certificate. At the time his card number was 17 and not 12 as claimed by him. He was, however, engaged in the plant on June 15, 1995 along with other workers. In view of his having been engaged on June 15, 1995, his seniority fell at serial no.28. Admitting the petitioner's claim that he was engaged in the plant during the year 1996 and retrenched on March 14, 1998, the respondents further averred that he and other workers were retrenched on account of reduction of work in the plant. The petitioner's claim that the plant was leased to M/s. Shivambu International Prop. Shankar Trading Company Ltd., was admitted by the respondents. It is averred that at the time of creation of lease only such workers were transferred to the lessee concern as were regular, and that the petitioner had worked only for 164 days in the year 1997-1998 and not 272 days as claimed by him. On the basis of these averments the respondents prayed for rejection of the petitioner's claim.

5. The petitioner in his rejoinder controverted the contentions of the respondents and reiterated his stand taken in the claim petition. According to him, he had "worked continuously from 1988 to 1995 and all the workers shifted to the Private Lessee i.e. respondent No.3 were taken back by the respondents after the lease was ceased."

6. On the pleadings of the parties, my predecessor-in-office framed the following issues for determination:

1. Whether the petitioner has been terminated without compliance of the provisions of Section 25F of the I.D. Act. If so, to what benefit?
2. Relief.

7. Be it stated that at the stage of final arguments the respondents made an application under Order 6, Rule 17, CPC and on the basis of the amended pleadings of the parties, my Id. Predecessor-in-office framed the following additional issue on May 24, 2007:

"Whether instead of having rendered 279 days of service of the claimant as a matter of fact rendered 182 days in the calendar year 1989? If so, its effect . . . OPR"

8. For the reasons to be recorded hereinafter, my findings on the above issues are as under:

Issue 1 : No

Additional Issue : Yes

Relief : The petition dismissed per operative part of the award

### REASONS FOR FINDINGS

#### ISSUE 1

9. In the reference, the services of the petitioner are stated to have been terminated w.e.f. 1995 without compliance with the provisions of Section 25 of the Act. Besides, his services are alleged to have been transferred to BDM Company, Sundernagar and certain workers junior to him alleged to have been retained in service, ignoring his claim.

10. But nowhere in his claim petition or statement as PW1 did the petitioner allege that his services were dispensed with by the respondents w.e.f. 1995. Also, he did not allege that his services were terminated by the respondents in 1995. In paragraph 1 of his statement of claim, he rather claimed to have worked continuously upto 1995.

11. What the petitioner deposed by way of his examination-in-chief as PW1 may also be noticed:

**"I was employed as unskilled worker in food processing Plant Jarol in 1998. I had been working in the said Plant which was lateron given on contract basis to Respondent No.3 M/s. BDM Company, Sundernagar. My card Number was 12. In 1995, I was taken ill for about 25/26 days. At that time taking benefit of my absence, due to illness, my card number was changed from 12 to 26. When I asked the reason for changing my card number, I was told by the Manager that wherever was to be done had already been done and if I have my grievance, I may go to the Court. The initial card number 12 issued to me has been misplaced somewhere. Card No.26 which was issued to me lateron is Ex. P-1. Lateron when I took up the matter with the workers Union, my card No. was again changed to 26 to 23. Card No.23 dated 1.3.1998 is Ex. P-2. When I was taken ill, I was advised 26 days rest by the Doctor vide certificate Ex. P-3 (Objected to on the ground that the certificate can be proved only by the Doctor who has issued the same. Objection kept open so as to be decided at the time of final arguments). The factum of illness was duly brought to the notice of the employer by me. During my absence from illness my juniors were made seniors to me and I was made junior to them. Sajju, Paras Ram & Kanshi Ram etc., who were junior to me were made seniors. In March, 1998, I was retrenched by the Respondents, illegally. I pray for justice."**

12. The respondents in their reply to the claim petition averred that the petitioner along with other workers was engaged as casual worker "on the basis of seasonal requirement of plant" in 1988 and that he worked as such from July 1988 to 1992. On July 28, 1992, services of all the workers including the petitioner were dispensed with for want of work in the Plant. On August 20, 1992, the plant was leased out to a private party (M/s. Shivambu International Prop. Shankar Trading Company Ltd.). On March 28, 1994, the lessee engaged all the casual workers, but dispensed with their services after paying them retrenchment compensation. On 31.3.1994, the plant was taken over by the H.P. Horticulture Produce Marketing and Processing Corporation and "the workers engagement was considered according to their seniority and keeping in view the work load in the plant in the month of July, 1994." But the petitioner did not report for duty during the period from October 25, 1994 to June 14, 1995 nor did he submit any application or medical certificate. At the time his card number was 17 and not 12 as claimed by him. The petitioner was, however, engaged in the Plant along with other workers on June 15, 1995 and his seniority fell at serial no.28.

13. In view of these averments of the respondents, the petitioner's claim of having worked continuously upto 1995 and his aforereproduced deposition, his services cannot be said to have been retrenched w.e.f. 1995 as stated in the reference.

14. But even if it is assumed that the services of the petitioner were terminated by the respondents or any one of them w.e.f. 1995, his retrenchment is not proved to be violative of the provisions of Section 25F of the Act, which reads:

"25F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

15. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25 (B). Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

- (i) ninety-five days, in the case of workman employed below ground in a mine; and one hundred and twenty days, in any other case."

16. There being no plausible evidence to show that the petitioner had worked for 240 days during the period of 12 calendar months preceding the date of his alleged retrenchment, the respondents cannot be said to have violated the aforementioned provisions of Section 25F of the Act. The issue under discussion is therefore held in the negative.

#### ADDITIONAL ISSUE

17. In the document Ex. RW1/X adduced in evidence by the respondents, the petitioner is shown to have worked for 182 days in 1989. There being no reason to discredit the correctness of this document, I have no hesitation in holding that in 1989, the petitioner had worked for 182 days. But this finding is indeed inconsequential in view of the facts and circumstances of the case. The issue under discussion is held accordingly.

18. As for the allegation that at the time the services of the petitioner were transferred to BDM Company, Sundernagar certain workers junior to him were retained in service ignoring his claim, the same, to my thinking, goes without proof. Not a shred evidence of his there to show that at the time the Fruit Processing Plant, Jarol was given on lease to BDM Company, Sundernagar, certain workers junior to the petitioner were retained in service by the lessor.

Also, there is no plausible evidence to show that certain workmen junior to the petitioner were retained in service by the respondents at the time the petitioner was allegedly retrenched w.e.f. 1995.

19. The upshot therefore is that the petitioner having failed to substantiate his allegations embodied in the reference is not entitled to any relief.

#### RELIEF

20. In view of what has been held above, the claim petition fails and is hereby dismissed. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 27th day of April, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref. No. : 252/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Shri Pawan Kumar S/o Sant Ram, R/o Village Thana, P.O. Kangoo Ka Gahra, Tehsil Sarkaghat, District  
Mandi, H.P. .Petitioner

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. .Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Pawan Kumar S/o Shri Sant Ram, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on June 2, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief

Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on June 2, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of .seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the .case/seniority. the true position came to notice, retrenchment notices were issued to the .above juniors., who were also .surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? .OPP
2. Whether the petition is not maintainable, as alleged. .OPR
3. Whether the petition suffers from the vice of delay and laches. .OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. .OPR
6. Relief.
7. For the reasons to be recorded hereinafter, my findings on these issues are as under:



Issue 1 :	Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
Issue 2 :	No.
Issue 3 :	No
Issue 4 :	No
Issue 5 :	No
Relief. :	The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner.s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner.s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner.s retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.-**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 193, 339, 323, 365, 358, 301 and 172 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on July 1, 1999. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of 'first come, last go'."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. PW1/B and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi

Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2112 dated 18.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 12, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and

continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 433/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Shri Pawan Kumar S/o Shri Bakshi, R/o Village Kangoo Ka Gahra, Tehsil Sarkaghat, Distt. Mandi, H.P.

. Petitioner

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Pawan Kumar S/o Shri Bakshi Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on November 22, 1998, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other

workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on November 22, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |  |
|-----------|--|
| Issue 1 : | Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services. |
| Issue 2 : | No.  |
| Issue 3 : | No   |
| Issue 4 : | No   |
| Issue 5 : | No   |

Relief. : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner.s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner.s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner.s retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."
14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;



(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 33, 294, 331, 337, 359, 359, 296 and 167 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-**Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on November 24, 1998. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1544 dated 21.3.07. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref. No. : 508/2008

Date of Institution : 14.7.2008

Date of decision : 30.5.2009

Shri Pawan Kumar S/o Shri Sunder Singh, R/o Village Manyo(Kot), P.O. Tihra, Tehsil Sarkaghat, District  
Mandi, H.P. . Petitioner

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner :

Sh. Suresh Kumar Sharma, Adv.

For the Respondent :

Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Pawan Kumar S/o Shri Sunder Singh, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on May 15, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on May 15, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified

as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority. the true position came to notice, retrenchment notices were issued to the above juniors., who were also surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? .OPP
2. Whether the petition is not maintainable, as alleged. .OPR
3. Whether the petition suffers from the vice of delay and laches. .OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. .OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial

establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of

retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 220, 357, 357, 348, 361, 293 and 160 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-**Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on May 14, 1999. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. PW1/B and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;". There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he

prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 625/07-2058, dated 16.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated May 26, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 549/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.5.2009

Shri Prem Singh S/o Shri Sidhu Ram, R/o Village & P.O. Giun, Tehsil Sarkaghat, Distt. Mandi, H.P.



*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Suresh Kumar Sharma, Adv.

For the Respondent :

Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Prem Singh S/o Shri Sidhu Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on May 1, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram (A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on May 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers**

and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . . .OPR
3. Whether the petition suffers from the vice of delay and laches. . . .OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . . .OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer,

HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.-**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 233, 358, 359, 361, 347, 357 and 166 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that

**establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on January 22, 1999. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act,

1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2034 dated 16.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 28, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent.s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 166/2006  
Date of Institution : 4.12.2006  
Date of decision : 28.4.2009

Shri Puran Chand S/o Shri Ghamanda Ram, Village Samkhetar, P.O. & Tehsil Padhar, District Mandi, H.P. . .Petitioner

*Versus*

1. The Engineer-in-Chief, H.P.P.W.D., U.S. Club, Shimla-1.
2. The Executive Engineer, H.P.P.W.D., Division No.1, Mandi, District Mandi, H.P. . . Respondents

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

The following reference was received for adjudication from the appropriate Government:

(1) **"Whether the termination of services of Shri Puran Chand S/o Shri Ghamanda Ram workman by the (1) Engineer-in-Chief, H.P.P.W.D., U.S. Club, Shimla (2) The Executive Engineer, H.P.P.W.D., Division No.1, Mandi, H.P. w.e.f. 26-03-98 on his 100% disability due to an accident during service period without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"**

(2) **"Whether the action of (1) Engineer-in-Chief, H.P.P.W.D., U.S. Club, Shimla, H.P. (2) The Executive Engineer, H.P.P.W.D., Division No.1, Mandi, H.P. not providing job to Shri Sita Ram S/o Shri Puran Chand on compassionate grounds on his 100% disability is proper and justified? If not, from which date Shri Sita Ram S/o Shri Puran Chand is entitled for job in place of his father?"**

2. On notice, the petitioner Puran Chand filed his statement of claim wherein he inter alia averred that he was engaged by the respondents as daily waged Beldar in 1987 and worked as such in HPPWD Sub Division, Padhar upto March 25, 1998. On March 25, 1998, around 1.45 P.M. when he along with other workers was working on the road, he met with an accident as a result of which he lost his left eye and sustained grievous injuries on both hands. He was immediately rushed to hospital where his both hands were amputated at the wrist region. On March 6, 1999, he was examined by a board of doctors and opined to have been permanently physically disabled to the extent of 100%. Claiming to have remained under treatment from March 25, 1998 to March 6, 1999, the petitioner averred that in view of the disablement suffered by him, he was not allowed by the respondents to join his duty. His services were thus terminated w.e.f. March 26, 1998. Claiming to have worked for 240 days in each calendar year of his service and during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in dispensing with his services, the respondents had violated the provisions of Section 25F of the Industrial Disputes Act, 1947 (the Act, for short) because no notice was given to him nor was he paid retrenchment compensation. Besides, the respondents violated the provisions of Sections 25N, 25G and 25H of the Act. Claiming to be the only bread-winner of his family, the petitioner further averred that he had requested the Executive Engineer/Assistant Engineer, HPPWD Sub Division, Padhar to re-engage him or his son Sita Ram in his place, but they refused to oblige. On August 2, 2000, he made a representation to the Executive Engineer, HPPWD Division No.1, Mandi (hereinafter referred to as the respondent 2) requesting him to take him (petitioner) into his employ or give employment to his son Sita Ram on compassionate grounds in accordance with the policy of the State Government, but of no avail. Left with no option, the petitioner preferred before the HP Administrative Tribunal, Shimla an application (OA No.(M) 396/2001). The said Tribunal while disposing of the application directed the respondent 1 to consider the petitioner's case sympathetically within a period of three months, vide order dated September 12, 2003. But this direction also did not prove to be fruitful, because the petitioner's application for employment of his son Sita Ram was rejected by the Engineer-in-Chief, H.P.P.W.D., U.S. Club, Shimla, vide letter dated June 17, 2004. However, by his office order dated June 26, 2000, the respondent 2 offered the petitioner a temporary post of Beldar on work-charged basis in the pay scale of Rs.2520-4140 w.e.f. April 1, 1998, but did not appoint him on this post till date. The petitioner further averred that he was entitled to regularization of his services as work-charged Beldar w.e.f. April 1, 1998 in the pay scale of Rs.2620, because he continued to be on the rolls of the respondents as his absence from duty on account of his having met with an accident was due to no fault on his part. It is also averred that a number of workmen, who were working along with the petitioner at Sub Divisional and Divisional level had also completed nine years of service and worked for 240 days in each calendar year of their service upto March 31, 1998, and that appointment orders were issued in their favour as well in the month of June, 2000. Services of these workmen, according to the petitioner, were regularized by the respondent w.e.f. April 1, 1998. However, the petitioner, who is entitled to the same benefits as have been granted to his co-workers, has not been given employment till date. He therefore prays for a direction to the respondents to reinstate him with full back-wages. He also prays for a direction to the respondents to give him benefit of continuity of service along with other consequential service benefits. He also prays for regularization of his services in the pay scale of 2520-4140 with initial start of Rs.2620/- per month w.e.f. April 1, 1998 on the basis of the appointment order dated June 26, 2000 issued by the respondent 2. Another direction sought to be made to the respondents is for appointment of the petitioner's son Sita Ram "on account of medical ground" on the basis of order dated September 12, 2003 passed by the H.P. Administrative Tribunal, vide O.A. No. (M) 396/2001).

3. The respondents in their joint reply inter alia averred that the petitioner was engaged as Beldar on muster roll basis in the month of February, 1987 and worked as such under the Assistant Engineer, HPPWD Sub Division, Padhar upto March 25, 1998. The petitioner, according to the respondents, had worked for 240 days in each calendar year upto March 25, 1998 except the year 1988 in which he worked for 126 days at his own will. Admitting the petitioner's claim of having met with an accident at about 1.45 P.M. on March 25, 1998 and lost his hands and left eye as a result of the accident, the respondents averred that on March 6, 1999, the medical authorities had opined him to have been permanently physically disabled to the extent of 100%. In view of the extent of the disabilities suffered by

him, he was no longer fit for the Government job and could not therefore be taken back in service by the department. According to the respondents, compensation of Rs.2,04,173/- already stands awarded by the Commissioner in favour of the petitioner under the Workmen's Compensation Act. Refuting the petitioner's allegation that his services were terminated, the respondents further averred that "the applicant was under treatment w.e.f. 26.3.1998 and caused 100% disability as per Medical Certificate and he was not fit for Govt. Duties as such there was no question to take him back on duties w.e.f. 26.3.1998". The services of the petitioner, it is further averred, were regularized as work-charged Beldar w.e.f. April 1, 1998, vide order No.PW-MDI-E-6/2000-5050-56 dated 26.6.2000, subject to fulfillment by him of certain conditions including the one; production of a medical fitness certificate which he failed to produce and could not therefore join his duties. As for the petitioner's prayer for employment of his son Sita Ram, the respondents' contention is that this prayer of his was rejected at the Government level, because the employment assistance case of Sita Ram was not covered under the existing policy of the Government. On the basis of these averments, the respondents pray for rejection of the petitioner's claim.

4. The petitioner in his rejoinder controverted the contentions of the respondents and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, my Ld. Predecessor-in-Office framed the following issues for determination:

1. Whether the claimant is entitled to the relief as asserted in the application. .OPP
2. Whether the denial of employment to the LR.s of disabled workman is proper and justified. .OPP
3. Whether the petition in the present form is maintainable before this Court or not. .OPR
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes partly.

Issue 2 : Yes

Issue 3 : Yes, maintainable.

Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

7. There is no gainsaying the fact that the petitioner was engaged by the respondents as daily waged Beldar on muster roll basis in February, 1987 and worked as such under the Assistant Engineer, HP.PWD Sub Division, Padhar upto March 25, 1998. Also, there is no denying the fact that on March 25, 1998, around 1.45 P.M. when the petitioner along with other workers was working on the road, he met with an accident as result of which he lost his left eye and sustained grievous injuries on both hands. He was immediately rushed to hospital where his both hands were amputated at the wrist region. On March 6, 1999, he was examined by a board of doctors and opined to have been permanently physically disabled to the extent of 100%. Claiming to have remained under treatment from March 25, 1998 to March 6, 1999, the petitioner averred that in view of the disablement suffered by him, he was not allowed by the respondents to join his duty. His services were thus terminated w.e.f. March 26, 1998.

8. The respondents, on the other hand, deny having terminated the services of the petitioner. According to them, the petitioner, who during the course of his employment met with an accident at about 1.45 P.M. on March 25, 1998 and lost his left eye and both hands as a result thereof, was opined by the medical board to have been permanently physically disabled to the extent of 100%. Although in view of the extent of the disability suffered by him, he was no longer fit for the Government job, his services were regularized as work-charged Beldar w.e.f. April 1, 1998, vide Himachal Pradesh Public Works Department order No.PW-MDI-E-6/2000-5050-56 dated June 26, 2000 subject to fulfillment by him of certain conditions including the one; production of a medical fitness certificate which he failed to produce and could not therefore join his duties. In view of these facts, the services of the petitioner, according to the respondents, cannot be said to have been terminated w.e.f. March 26, 1998 as alleged by him.

9. I have given my considered thought to the rival contentions and I understand that the petitioner's allegation of having been retrenched by the respondents w.e.f. March 26, 1998 deserves acceptance in view of the facts and circumstances of the case. No doubt the respondents never issued such orders as may show that the services of the petitioner were terminated w.e.f. March 26, 1998, but non-existence of such orders notwithstanding, the facts and circumstances of the case are demonstrative of his services having been terminated w.e.f. the said date. The petitioner, who undeniably sustained grievous injuries during the course of his employment and remained under treatment from March 25, 1998 to March 6, 1999, averred that on March 6, 1999, he was examined by a board of doctors and opined to have been permanently physically disabled to the extent of 100%. He alleged that in view of the disablement suffered



by him, he was not allowed by the respondents to join his duty. This allegation of his having not been refuted in the respondents. reply, his claim that his services stood terminated w.e.f. March 26, 1998, deserves acceptance. More so, in view of the respondents. following averments in paragraph 3 of their joint reply:

**"The applicant was under treatment w.e.f. 26.3.1998 and caused 100% disability as per Medical Certificate and he was not fit for Govt. duties as such there was no question to take him back on duties w.e.f. 26.3.1998"**

10. The Ld. Dy. District Attorney appearing for the respondents contends with vehemence that in the circumstances where the services of the petitioner were regularized as work-charged Beldar w.e.f. April 1, 1998, vide Himachal Pradesh Public Works Department order No.PW-MDI-E-6/2000-5050-56 dated June 26, 2000, subject to fulfillment by him of certain conditions including the one; production of a medical fitness certificate which he failed to produce till date, his allegation of having been retrenched w.e.f. March 26, 1998 is nothing but falsity. I am not impressed with this contention. The reason being that the petitioner, who became permanently physically disabled to the extent of 100% due to the grievous injuries sustained by him in the course of his employment, cannot be expected to produce a medical fitness certificate as desired in the office order aforementioned. The respondents. aforementioned conditional offer of appointment is therefore nothing but virtual denial of job to the petitioner. So, the respondents. conditional offer of appointment notwithstanding, the petitioner.s services can safely be held to have been dispensed with w.e.f. March 26, 1998. More so, in view of the aforementioned averments of the respondents. The Ld. Dy. District Attorney.s contention aforementioned therefore merits rejection and is rejected.

11. Section 25-F of the Act, which is alleged to have been violated by the respondents, may be reproduced with advantage:

"25F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days. average [pay for every completed year of continuous service] or any part thereof in excess of six months; and
  - (i) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

12. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25 (B). Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

(i) ninety-five days, in the case of workman employed below ground in a mine; and one hundred and twenty days, in any other case."

13. The respondents in paragraph 1 of their joint reply to the claim petition inter alia averred:

**"the applicant was engaged as Beldar on Muster Roll basis in the year 2/1987 and he worked upto 25.3.1998 under Assistant Engineer HP.PWD Sub Divn. Padhar H.P. The applicant worked for 240 days or more in each calendar year upto 25.3.1998 except in the year 1988 in which he worked for 126 days only at his own will."**

14. These averments and the mandays chart Ex. RW1/A adduced in evidence by the respondents are indicative of the petitioner having worked for more than 240 days during the period of 12 calendar months preceding the date of his retrenchment (March 26, 1998). The petitioner in his statement as PW1 maintained that before terminating his services, the respondents did not give him any notice nor did they pay him retrenchment compensation. There being no reason to discredit this deposition of his, the respondents can safely be held to have violated the abovementioned provisions of Section 25F of the Act in dispensing with his services w.e.f. March 26, 1998.

15. But even if the respondents' contention that the services of the petitioner were never terminated, is assumed to be correct, the petitioner is entitled to the protections as envisaged under Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Disabilities Act, for short). This Section reads:

"1. Non-discrimination in Government employments.-(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability.

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

16. In Kunal Singh v. Union of India and another, 2003(4) SCC 524 = 2003 (96) FLR 990 (SC) the Hon.ble Apex Court while interpreting the scope and import of these provisions inter alia observed:

"Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of section 47 clearly indicate its mandatory nature. The very opening part of the section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service." The section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of section 47. Section 47 contains a clear directive that the employee shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

17. In *Bhagwan Dass v. Punjab State Electricity Board*, 2008 (116) FLR 627, the appellant 1 was stated to have joined the respondent board on ad-hoc/work-charge basis on July 19, 1977. His services were regularized as an Assistant Lineman on June 16, 1981. While in service he became totally blind on January 17, 1994. He remained absent from duty without any sanctioned leave for the period from January 18, 1994 to March 21, 1997. He was directed by the Executive Engineer to resume duty, but he failed to report for duty. On September 13, 1994, a charge-sheet was issued initiating disciplinary proceedings against him for gross misconduct under regulation 8 of the Punjab State Electricity Board Employees Punishment & Appeal Regulation Act, 1971. The appellant by his letter dated July 17, 1996 requested the Board to retire him from service. As a matter of fact by this letter he sought to explain his absence from duty and requested that his wife might be employed in his place. In view of these facts, the Board denied him the protection of Section 47 of the Disabilities Act. The Hon.ble Supreme Court of India inter alia ruled:

"17. Appellant No.1 was a Class IV employee, a Lineman. He completely lost his vision. He was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would have been at that time is not difficult to imagine. In those circumstances it was the duty of the superior officers to explain to him the correct legal position and to tell him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter, completely/out of context. The action of the concerned officers of the Board, to our mind, was deprecable.

18. We understand that the concerned officers were acting in what they believed to be the best interests of the Board. Still under the old mind-set it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country.

19. In light of the discussions made above, the action of the Board in terminating the service of the disabled employee (appellant No.1) with effect from March 21, 1997 must be held to be bad and illegal. In view of the provisions of section 47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions etc. till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of his salary from March 22, 1997 till date. If any balance remains, that should be adjusted in easy monthly installments from his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due payments, after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the judgment before the Secretary of the Board."

(Emphasis is mine)

18. In *Karnataka State Road Transport Corporation vs. Ahmed and others*, 2006 (110) FLR 1106, the first respondent (hereinafter referred to as the "workman") was appointed as Peon in the Chikballapur depot in Kolar Division of the appellant Corporation. During the course of his employment, his both legs were amputated on account of his having developed gangrene. He was therefore not in a position to discharge his normal duties in the Corporation. On December 16, 1996, he filed an application before the Corporation, expressing his inability to discharge his duties on account of his physical disabilities and requested for appointment of his wife on compassionate grounds. His request was, however, turned down by the Corporation. The Hon.ble Apex Court inter alia held:

"The undisputed facts disclose that the services of the workman came to be terminated on account of amputation of his two legs and as such he has become totally unsuitable to carry on the job to which he was appointed. The second proviso to section 47(1) of the Disabilities Act provides that if it is not possible to adjust the workman, who suffers from a disability in any post, he is required to be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation. The Disabilities Act, is a welfare legislation meant to protect the interest of the people, who suffers from the disability set down in the Disabilities Act. Therefore, the provisions of section 47 (1) of the Disabilities Act is mandatory in nature. The words "no establishment shall dispense with or reduce in rank, an employee, who acquires disability" is in the nature of an injunction given to the employer not to terminate the services of an employee, who acquires disability during the services subject to the conditions set out in the provisos given to the said section. Therefore, it appears to us that it was not permissible for the Corporation to terminate the services of the workman. The Corporation was under a statutory obligation to continue the workman till the age of superannuation. However, instead of giving effect to the mandate of the second proviso given to sub-Section (1) of section 47 of the Disabilities Act, the employer, who is an instrumentality of the State has in total disregard of the said provision, has terminated the services of the workman, a peon, who has put in service more than 20 years. Therefore, the termination of the workman from service by the Corporation is ab-initio void in law. But the workman has not challenged his

termination from service. Therefore, the workman's wife, who has passed SSLC and has done her Teacher's Training Course and Hindi Rathna, who is competent to discharge the duties of a Peon, is required to be employed in place of the workman. It would be in the public interest, instead of directing the Corporation to keep the workman in the supernumerary post, and pay some emoluments without extracting any work, to direct the Corporation to give compassionate appointment to the workman's wife. It is claimed by her that she has an obligation to manage the entire family consisting of workman and five other members. Under these circumstances, when the scheme framed by the Corporation provides for employment to the members of the family of a workman, who dies while in service, on compassionate ground, we are unable to appreciate the rationale behind in not formulating a scheme for appointment on compassionate ground, on account of total permanent disability of a workman. No doubt, it is for the Corporation to frame a scheme for providing for appointment on compassionate ground. Any scheme framed by the Corporation for the benefit of a workman must be fair and reasonable. While the members of a family of a deceased workman are entitled for appointment on compassionate ground by virtue of the Circular dated 9th of October, 1991, as noticed by us earlier, we are unable to conceive one good ground to deny a similar benefit to the members of the family of a workman, who is totally paralysed or permanently disable to do any work. Under these circumstances, we are of the view that this Court, exercises its extraordinary power under Article 226 of the Constitution of India to bring about equality for law to these sections of the workman, who are fairly identically situated. We are of the considered view that when injustice committed by an instrumentality of the State is apparent, and the said injustice seriously affects the right to livelihood of workman guaranteed under Article 21 of the Constitution of India, it would not be appropriate for this Court to be a silent spectator of such injustice done."

19. In view of these rulings and the provisions of Section 47 of the Disabilities Act, I have no hesitation in holding that the respondents are under a statutory obligation to keep the petitioner on a supernumerary post until a suitable post for him is available or he attains the age of superannuation, whichever is earlier.

20. In view of the above, the petitioner is entitled to reinstatement as Beldar and continuity of service w.e.f. March 26, 1998. His failure to produce a medical fitness certificate notwithstanding, he is entitled to regularization of his services as work-charged Beldar w.e.f. April 1, 1998 in view of Himachal Public Works Department office order No.PW-MDI-E-6/2000-5050-56 dated June 26, 2000 Ex. RW1/C. Besides, he is entitled to full back-wages for the period from March 26, 1998 to the date of his reinstatement. The issue under discussion is accordingly held in his favour and against the respondents.

## ISSUE 2

21. No such policy/rules of the State Government have been produced as may show that in the event of a workman becoming permanently physically disabled to the extent of 100% during the course of his employment, his family member is entitled to job on compassionate grounds. So the respondents' refusal to give employment to the petitioner's son Sita Ram on compassionate grounds cannot be said to be improper and unjustified. The issue on hand is therefore held against the petitioner and in favour of the respondents.

## ISSUE 3

22. In view of what has been held under the above issue 1, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondents.

## RELIEF

23. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement as Beldar and continuity of service w.e.f. March 26, 1998. His failure to produce a medical fitness certificate notwithstanding, he is held entitled to regularization of his services as work-charged Beldar w.e.f. April 1, 1998 in view of Himachal Pradesh Public Works Department office order No.PW-MDI-E-6/2000-5050-56 dated June 26, 2000 Ex. RW1/C. Besides, he is held entitled to full back-wages for the period from March 26, 1998 to the date of his reinstatement. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 28th day of April, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 145/2002

Date of Institution : 29.5.2002

Date of decision : 28.4.2009

1. Sh. Raj Kumar S/o Sh. Bala Ram, Village Behna Jattan, Tehsil, Ghumarwin, Distt. Bilaspur, H.P.
2. Sh. Prem Lal S/o Sh. Hari Singh, Village, Behna Jattan, Tehsil, Ghumarwin, Distt. Bilaspur, H.P.
3. Sh. Gian Chand S/o Sh. Tawarsu, Village, Tanyur, PO, Behna Jattan, Tehsil, Ghumarwin, Distt. Bilaspur, H.P.
4. Sh. Raj Kumar S/o Sh. Durgu Ram, Village, Sihra, P.O. Binola, Tehsil, Sadar, Distt. Bilaspur, H.P.
5. Sh. Rup Lal S/o Sh. Tikhoo Ram, Village, Sihra, P.O. Binola, Tehsil Sadar, Distt. Bilaspur, H.P.
6. Sh. Prem Lal S/o Sh. Jagan Nath, Vill. Sihra, P.O. Binola, Tehsil, Sadar, Distt. Bilaspur, H.P.

. Petitioners

Versus

Executive Engineer, H.P.P.W.D. Division No.1, Distt. Bilaspur, H.P.

. Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioners : Sh. Sunder Singh Sippy, AR  
 For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether the termination of the services of Sh. Raj Kumar and 5 other workmen (As per Annexure-A, Overleaf) by the Executive Engineer, H.P.P.W.D. Division No.1, Distt. Bilaspur is proper and justified? If not, what relief of reinstatement and service benefits the above workmen are entitled to?"**

2. On notice, the petitioner's namely Raj Kumar S/o Bala Ram, Prem Lal, Gian Chand, Raj Kumar S/o Durgu Ram, Roop Lal and Prem Lal (hereinafter referred to as the petitioner 1,2,3,4, 5 and 6 respectively) filed their statements of claim separately. The petitioners 1, 2 and 3 in their respective statements of claim averred that they were engaged by the respondent as daily waged Beldar on December 1, 1997 and worked as such upto September 30, 1998. On October 1, 1998, the respondent terminated their services without any reason.

3. The petitioners 4,5 and 6 in their respective statements of claim averred that they were engaged by the respondent as daily waged Beldar on December 1, 1997, February 1, 1998 and December 10, 1997 respectively, and that they worked as such upto February 15, 1999. On February 16, 1999, their services, according to them, were orally terminated by the respondent without any reason.

4. Claiming to have worked for more than 240 days in each completed year of their service, the six petitioners alleged that at the time their services were dispensed with by the respondent no notice was given to them nor were they paid retrenchment compensation as envisaged under Section 25F of the Industrial Disputes Act, 1947 (the Act, for short). In terminating their services, the respondent, according to them, not only violated the said provisions but also violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act, because he at the time of termination of their services retained in service certain workmen who were junior to them. The petitioners therefore prayed for a direction to the respondent to reinstate them with full back-wages and continuity of service.

5. Refuting the petitioners' allegation of violation of the provisions of Sections 25F and 25G of the Act, the respondent in his separate replies to the claim petitions averred that they were engaged as casual labourers temporarily in the Public Works Department for seasonal and emergent works, and that they were not retrenched but were dis-engaged on completion/abandonment of the works. In view of the petitioners having been engaged as casual labourers for execution of seasonal and emergent works being carried out by the department from time to time and dis-engaged on completion/abandonment of such works, they, according to the respondent, were not covered by the Industrial Disputes Act, 1947 and no provision of this Act can therefore be said to have been violated. The respondent therefore prayed for rejection of their claim.

6. the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the termination of services of Raj Kumar and five other workmen (petitioners) by the respondent is improper and unjustified as alleged. . .OPP
2. If issue No.1 is proved in the affirmative, what service benefits the petitioners are entitled to? . .OPP
3. Whether the petitioners were engaged temporarily as Beldar against seasonal and emergent works. If so, its effect? . .OPP
4. Relief.
7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes  
 Issue 2 : They are entitled to reinstatement and continuity of service.  
 Issue 3 : No  
 Issue 4 : Petitions allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUES 1 & 3

8. These issues being inter-linked are taken up together.

9. First the respondent.s claim that the petitioners were engaged as casual labourers temporarily in the Public Works Department for .sasonal and emergent works.. This claim, to my thinking, does not appear to have been established in view of the materials on record. Nowhere in his replies to the claim petitions did the respondent particularise the works which were seasonal and emergent and against which the petitioners were allegedly engaged on temporary basis. The works claimed to be seasonal and emergent are, however, stated to be "C/O bridge over Ali Khad including its approaches on either side" in the respondent.s witness K.R. Katoch.s affidavits Ex. RW1/A to Ex. RW1/F. The respondent to substantiate his claim that the petitioners were engaged for completion of this work only, ought to have brought on record such documents, particularly such muster rolls as may have lent assurance thereto. But he having failed so to do, it is difficult to accept the claim. More so, in view of the following deposition of the respondent.s aforesaid witness in his affidavits Ex. RW1/A to Ex. RW1/F:

"That the work being an emergent as it was funded by HUDCO Loan (copy of agreement with the HUDCO is attached as Annexure A-II) was executed departmentally and through contractor. That the department labour was deployed along with additional labour engaged for sanctioned period of 89 days in the first instance. However getting further sanction even after 89 days the applicant remained engaged on daily wages. But on completion of major quantum of work and least scope of utilization of additional labour including the applicant this department had tried to adjust him on works elsewhere in the near vicinity the applicant did not present himself where as labourers junior to him who were working along with the applicant offered their willingness to work on the other site of work."

10. It is manifest from this deposition that the petitioners were not engaged to complete the aforementioned work only. Had they been engaged only to complete that work the respondent would have not tried to adjust them "on works elsewhere in the near vicinity". But even if it assumed that the petitioners were engaged for completion of the work namely "C/O bridge over Ali Khad including its approaches on either side", there is nothing to suggest that they at the time the respondent took them into his employ, were made aware of their having been so engaged. Also, there is no plausible material to show that their employment came to an end simultaneously with the completion of the work.

11. In S. Nilajkar and others vs. Telecom District Manager, Karnataka, AIR 2003 SC 3553, the principle question that arose before the Hon.ble Supreme Court of India was:

**"Whether the workmen recruited for discharging temporary job under a project can insist on compliance of section 25F of the Act if their services are dispensed with on the project coming to an end."**

12. Having examined the scope of Sections 2(oo) and 25F of the Act, the Hon.ble Apex Court inter alia ruled:

"12. "Recruitment" in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that the Parliament has employed the expression "the termination by the employer of the service of a workman for any reason whatsoever" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term .retrenchment. a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term .retrenchment., and therefore,

termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of .retrenchment. dehors the reason for termination. To be excepted from within the meaning of .retrenchment. the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of .retrenchment.

13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-

- (i) that the workman was employed in a project or scheme of temporary duration;
- (ii) the employment was on a contract, and not as a daily wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and
- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- (iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment."

13. The respondent having failed to satisfy these conditions, the termination of services of the petitioners, to my thinking, decidedly amount to retrenchment within the meaning of clause (oo) of Section 2 of the Act. The respondent.s contention therefore merits rejection and is rejected.

14. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**"25F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days. average [pay for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

15. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25 (B). Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

- (i) ninety-five days, in the case of workman employed below ground in a mine; and
- (ii) one hundred and twenty days, in any other case."

16. The mandays chart filed along with the respondent's replies to the claim petitions are demonstrative of the petitioners except Gian Chand having worked for more than 240 days during the period of 12 calendar months preceding the date of their retrenchment. There is nothing to suggest that the respondent had at the time of termination of the services of the five petitioners (Raj Kumar S/o Bala Ram, Prem Lal S/o Hari Ram, Raj Kumar S/o Durgu Ram, Roop Lal and Prem Lal S/o Jagan Nath) given them one month's notice or paid them wages in lieu of such notice, along with retrenchment compensation as envisaged under Section 25F of the Act. The said petitioners' removal from service thus being violative of the said provisions was improper and unjustified.

17. In dispensing with the services of the aforesaid five petitioners as also petitioner Gian Chand, the respondent appears to have violated the provisions of Section 25G of the Act, which provides:

**"25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

18. The respondent's aforesaid witness K.R. Katoch in his affidavits Ex. RW1/A to Ex. RW1/F inter alia maintained:

"But on completion of major quantum of work and least scope of utilization of additional labour including the applicant this department had tried to adjust him on works elsewhere in the near vicinity the applicant did not present himself where as labourers junior to him who were working along with the applicant offered their willingness to work on the other site of work detailed below:-

Sr. No.	Name of work	Muster Rolls No.	Period
1.	Restoration Rain damages in N.B.T. and water sports center at Bilaspur	164	1-10-1998 to 31-10-1998

Three vacancies of beldars in this Muster Roll No.164 remained to be filled in during 1-10-1998 to 31-10-1998. Thus it is evident that petitioner left the job at his sweet will."

(emphasis supplied)

19. This deposition lends credence only to the petitioners' claim that the respondent had at the time of termination of their services retained in service certain workmen who were junior to them. There is no whisper in the respondent's replies to the petitioners' statements of claim that they were sought to be adjusted "on works elsewhere in the near vicinity", but they had refused to get themselves so adjusted. It is therefore difficult to accept the respondent's aforesaid witness' claim that the petitioners were sought to be adjusted against some other works but they had refused to oblige, and that evidently they had left the job on their own. The respondent having thus on his own showing proved that at the time of termination of the services of the petitioners retained in service certain workmen junior to them, decidedly violated the aforementioned provisions of Section 25G of the Act.

20. The upshot is that in terminating the services of the petitioners, the respondent is proved to have violated the provisions of Section 25G of the Act. Besides, in case of five of the petitioners (Raj Kumar S/o Bala Ram, Prem Lal S/o Hari Ram, Raj Kumar S/o Durgu Ram, Roop Lal and Prem Lal S/o Jagan Nath) he is proved to have violated the provisions of Section 25F of the Act as well. Both the issues under discussion are accordingly held in favour of the petitioners and against the respondent.

## ISSUE 2

21. In view of what has been held under the foregoing issues 1 and 3, the petitioners are decidedly entitled to reinstatement in the same capacity as in which they were working at the time their services were dispensed with by the respondent. Besides, they are entitled to continuity of service from the respective dates of their retrenchment. They are, however, held not entitled to back-wages, for their pleadings as also evidence are non-existent in such averments as may show that they were not gainfully employed or that they remained idle after their retrenchment. The issue on hand is held accordingly.

## RELIEF

22. Judged in the light of what has been held under the issues above, the claim petitions succeed partly and are allowed in part. Accordingly, the petitioners are held entitled to reinstatement in the same capacity as in which



they were working at the time their services terminated. Besides, they are held entitled to continuity of service from the respective dates of their retrenchment. They are, however, held not entitled to back-wages. The respondent is directed to reinstate them within a period of 90 days from today failing which the petitioners shall be entitled to 25% back-wages from the respective dates of their unlawful retrenchment. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication and the file after completion consigned to records.

Announced in the open Court today this 28th day of April, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 494/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.5.2009

Shri Rajender Kumar S/o Shri Sohan Singh, Village Bhallu, P.O. Sandhole, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Petitioner

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Rajender Kumar S/o Shri Sohan Singh, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on August 1, 1998, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-

1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on August 1, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . . .OPR
3. Whether the petition suffers from the vice of delay and laches. . . .OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . . .OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 :Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

## ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 18, 283, 361, 363, 361, 363, 307 and 172 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on November 19, 1998. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;". There being no rebuttal to this deposition of

his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005& 400/07- dated 13.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated May 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref. No. : 239/2008

Date of Institution : 13.6.2008

Date of decision : 30.5.2009

Shri Ramesh Chand S/o Shri Narain Singh, R/o Village Goart, P.O. Seoh, Tehsil Sarkaghat, District Mandi, H.P.

. .Petitioner

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Ramesh Chand S/o Shri Narain Singh, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on June 1, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on June 6, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a

three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors., who were also surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . .OPP
2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 :Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in



which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of

retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 204, 366, 363, 365, 363, 306 and 168 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-**Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on April 10, 1999. He in paragraph 2 of his statement of claim inter alia averred:

**"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."**

18. In reply, the respondent in paragraph 2 inter alia averred:

"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. PW1/B and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he

prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2008 dated 13.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 19, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 232/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Shri Ramesh Kumar S/o Shri Sambhu Ram, R/o Village Hiyun, P.O. Nalyalana, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Petitioner

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

. Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Ramesh Kumar S/o Shri Sambhu Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on January 3, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on January 3, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works**

**Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of

HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 338, 362, 363, 362, 360, 264 and 172 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-**Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".



17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on January 4, 1999. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;". There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2070 dated 16.4.07. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 12, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 466/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Shri Ramesh Kumar S/o Shri Dharam Singh, Village Chalahli, P.O. Cholthara, Tehsil Sarkaghat, Distt. Mandi, H.P. . .Petitioner

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . .Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Ramesh Kumar S/o Shri Dharam Singh, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on December 2, 1998, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on December 2, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the

reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . . OPP
2. Whether the petition is not maintainable, as alleged. . . OPR
3. Whether the petition suffers from the vice of delay and laches. . . OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . . OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;"

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 26, 336, 333, 320, 361, 363, 308 and 176 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on December 2, 1998. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of 'first come, last go.'"

18. In reply, the respondent in paragraph 2 inter alia averred:

"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/45/2005 & 337/07-1547, dated 21.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated April 11, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may

have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref. No. : 333/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Smt. Reshmi Devi W/o Shri Sohan Singh, R/o Village Chawki, P.O. Mandup, Tehsil Sarkaghat, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

*..Respondent.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

(1) The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Smt. Reshmi Devi W/o Shri Sohan Singh, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on November 11, 1998, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the



principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on November 11, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of .seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the .case/seniority. the true position came to notice, retrenchment notices were issued to the .above juniors., who were also .surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP.
2. Whether the petition is not maintainable, as alleged. OPR.

3. Whether the petition suffers from the vice of delay and laches. OPR.
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR.
6. Relief.
7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### ISSUE 1:

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being

carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner.s services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner.s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner.s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner.s retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 295, 362, 352, 361, 360, 295 and 178 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on February 7, 1999. She in paragraph 2 of her statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement..."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o

Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members;" There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

#### ISSUE 2:

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3:

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1832 dated April 11, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 30, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4:

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5:

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 483/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.5.2009

Shri Santosh Paul S/o Shri Balak Ram, R/o Village Chhater, P.O.Brang, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

(1) The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Santosh Paul S/o Shri Balak Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on January 11, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the

petitioner.s consequent retrenchment was unlawful and unjustified. Another count on which the petitioner.s retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent.s claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis on January 11, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner.s contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner.s allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of .seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the .case/seniority. the true position came to notice, retrenchment notices were issued to the .above juniors., who were also .surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP.
2. Whether the petition is not maintainable, as alleged. OPR.
3. Whether the petition suffers from the vice of delay and laches. OPR.
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR.
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### ISSUE 1:

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-



- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner.s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner.s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner.s retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 280, 361, 212, 353, 329, 296 and 168 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on March 15, 1999. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination

as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### ISSUE 2:

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3:

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2093 dated 17.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4:

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5:

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is

higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S. S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 377/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Smt. Sati Devi W/o Shri Mangat Ram, R/o Village Chowki, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P.  
..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

(1) The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Smt. Sati Devi W/o Shri Mangat Ram, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on January, 15, 1999, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified

authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on January 15, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP.
2. Whether the petition is not maintainable, as alleged. OPR.
3. Whether the petition suffers from the vice of delay and laches. OPR.
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR.
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

### ISSUE 1:

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 277, 359, 357, 363, 362, 301 and 168 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on February 7, 1999. She in paragraph 2 of her statement of claim inter alia averred:

**"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."**

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members." There being no rebuttal to this



deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

#### ISSUE 2:

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3:

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 &736/07-19631721, dated April 12, 2007.

On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated April 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4:

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 355/2008

Date of Institution : 13.6.2008

Date of decision : 30.5.2009

Smt. Savitri Devi W/o Shri Joginder Pal, R/o Village Banaal, P.O. Baroti, Tehsil Sarkaghat, District Mandi,  
H.P.

..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Smt. Savitri Devi W/o Shri Joginder Pal, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on December 4, 1998, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on December 4, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified

as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner.s contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner.s allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of .seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the .case/seniority. the true position came to notice, retrenchment notices were issued to the .above juniors., who were also .surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP.
2. Whether the petition is not maintainable, as alleged. OPR.
3. Whether the petition suffers from the vice of delay and laches. OPR.
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR.
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

### ISSUE 1:

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner.s allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances

of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically

disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 27, 349, 364, 362, 365, 360, 300 and 167 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on December 5, 1998. She in paragraph 2 of her statement of claim inter alia averred:

**"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."**

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members;" There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

ISSUE 2:

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3:

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 498/07-1829, dated April 11, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated April 30, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4:

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5:

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 388/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Smt. Sheela Devi W/o Shri Paras Ram, R/o Village Dabrot, P.O. Marhi, Tehsil Sarkaghat, District Mandi, H.P.  
..Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

(1) The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Smt. Sheela Devo W/o Shri Paras Ram, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on June 1, 1999, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on June 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works**



**Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP.
2. Whether the petition is not maintainable, as alleged. OPR.
3. Whether the petition suffers from the vice of delay and laches. OPR.
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR.
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1:

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer,

HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 39, 339, 362, 357, 361, 361, 296 and 171 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the

absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on November 5, 1998. She in paragraph 2 of her statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members;" There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

#### ISSUE 2:

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3:

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be

generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1969 dated 12.4.07. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 22, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4:

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5:

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref. No. : 233/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Shri Shesh Pal S/o Shri Barfu Ram, R/o Village & P.O. Saklana, Tehsil Sarkaghat, District Mandi, H.P.

*...Petitioner.*

#### *Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

*..Respondent.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

(1) The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Shesh Pal S/o Shri Barfu Ram, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on May 10, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)-4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on May 10, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors., who were also surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP.
2. Whether the petition is not maintainable, as alleged. OPR.
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR.
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### ISSUE 1:

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to

my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties. pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner.s services were dispensed with, in its material part reads: "25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner.s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner.s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the



petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 232, 366, 335, 360, 332, 305 and 168 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on May 4, 1999. He in paragraph 2 of his statement of claim inter alia averred:

**"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."**

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. PW1/B and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;". There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2:

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3:

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1681 dated 21.3.07. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 12, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4:

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5:

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S. S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 99/2001  
Date of Institution : 13.6.2001  
Date of decision : 29.4.2009

Sh. Shri Ram S/o Sh. Nikku Ram, Village & P.O. Bainhajatta, Bilaspur, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division No.1, Bilaspur, H.P.

*..Respondent.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Sunder Singh Sippy, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

(1) The following reference was received for adjudication from the appropriate Government:

**"Whether the termination of services of Sh. Ram, workman by Executive Engineer, H.P.P.W.D Division No.1, Bilaspur, Himachal Pradesh without following the provisions of section 25(F)/25(N) of Industrial Disputes Act, 1947 is legal and justified. If not, to what relief of consequential service benefits and amount of compensation the above worker is entitled to?"**

2. On notice, the petitioner filed his statement of claim wherein he inter alia averred that he was engaged by the respondent as daily waged Cleaner on July 25, 1987 and worked as such upto December 31, 1991. Thereafter his services, according to him, were terminated by the respondent on the pretext of non-availability of budget. At the time his services were dispensed with the respondent told him that he would be called on receipt of budget. Claiming to have made efforts for his re-engagement as daily waged Cleaner, the petitioner further averred that the respondent took him into his employ on July 1, 1998, and that he (petitioner) worked as daily waged Cleaner upto January 31, 1999. However, on February 1, 1999, his services were again terminated by the respondent orally. Claiming to have worked for more than 240 days in each completed year of his service, the respondent alleged that at the time his services were dispensed with, he was not given one month's notice nor was he paid retrenchment compensation as envisaged under Section 25F of the Industrial Disputes Act, 1947 (the Act, for short). It is also averred that during the years 1998, 1999 and 2000, the respondent had recruited 21 new workers, ignoring the petitioner. The petitioner therefore prayed for a direction to the respondent to reinstate him with full back-wages. He also prayed for regularization of his services.

3. Refuting the petitioner's claim of having been engaged as daily waged Cleaner in 1987, the respondent in his reply averred that he (petitioner) was never employed in any capacity in the department in that year. In 1988 and 1989, the petitioner, according to the respondent, was, however, engaged as daily waged worker for specific periods of time that is, 77 and 81 days respectively subject to availability of work and funds. In 1989, he, according to the respondent, abandoned the job on his own. In 1998, he was, however, re-engaged temporarily for 139 days and retrenched "on completion/abandonment of such works". Disputing the petitioner's claim of having completed 240 days during the aforementioned years, the respondent further averred that he having been engaged for specific periods of time and dis-engaged on completion of "work/paucity of funds", no provision of the Act was violated and the claim petition was not maintainable. The respondent therefore prayed for rejection of the petitioner's claim.

4. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the termination of services of the petitioner by the respondent is violative of Sections 25F and 25N of the I.D. Act, 1947. OPP.
2. Whether the petition is not maintainable in view of the preliminary objections raised by the respondent. OPR.
3. Relief

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : No

Issue 2 : Yes

Relief : The petition dismissed per operative part of the award.

## REASONS FOR FINDINGS

## ISSUE 1:

6. The petitioner's claim of having been engaged by the respondent as daily waged Cleaner on July 25, 1987 does not appear to be having a ring of truth in view of the materials on record. In his demand notice (Annexure-R1) addressed to the Labour Officer, Mandi, the petitioner claimed to have worked for 156 days in 1987, vide muster roll nos. 227, 326, 228, 353 and 420. Of these muster rolls, only three bearing nos. 227, 326, 228 and 353 have been brought on record, but they are non-existent in his name. The year-wise mandays chart Ex. RW1/A adduced in evidence by the respondent is also indicative of the petitioner having not been engaged in any capacity in HPPWD Sub Division No.1, Bilaspur in 1987. The petitioner's claim that he was engaged by the respondent as daily waged Cleaner on July 25, 1987 cannot therefore be accepted.

7. But his claim of having worked for more than 240 days "in each completed year of service" is also nothing but falsity. The mandays chart aforementioned the correctness which is not disputed by the petitioner, is indicative of his having worked for 77 days in 1988, 81 days in 1989 and 139 days in 1998.

8. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

"25F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days. average [pay for every completed year of continuous service] or any part thereof in excess of six months; and
  - (i) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

9. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25 (B). Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (xi) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (xii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

- (i) ninety-five days, in the case of workman employed below ground in a mine; and
- (ii) one hundred and twenty days, in any other case."

10. Since the petitioner is not proved to have completed 240 days during the period of 12 calendar months preceding the dates of his alleged retrenchment (January 1, 1992 and February 1, 1999), the respondent was not obliged to serve him with one month.s notice and pay him retrenchment compensation as envisaged under Section 25F of the Act. The petitioner.s contention that in retrenching him the respondent had violated the provisions of Section 25F of the Act cannot therefore be accepted.

11. As for the alleged violation of the provisions of Section 25N of the Act, the same also does not appear to have been established. Section 25N of the Act in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

12. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

13. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

14. Although HPPWD Division No.1, Bilaspur is not shown to be a factory as defined above, even if the same is assumed to be "an industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner having not been proved to be in continuous service for not less than one year under the respondent, the latter was not obliged to give him (petitioner) three months' notice or pay him in lieu of such notice wages for the period of notice as envisaged under Section 25N of the Act. In terminating the services of the petitioner, the respondent cannot therefore be said to have violated the said provisions. The issue under discussion is therefore held against the petitioner and in favour of the respondent.

#### ISSUE 2:

15. In view of what has been held under the foregoing issue, the petition is decidedly not maintainable. The issue on hand is therefore held against the petitioner and in favour of the respondent.

#### RELIEF:

16. Judged in the light of my findings on the issues above, particularly issue 1, the petition fails and is hereby dismissed. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 29th day of April, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 441/2008

Date of Institution : 13.6.2008

Date of decision : 30.5.2009

Shri Sunil Kumar S/o Shri Dhani Ram, R/o Village Thana, P.O. Kango Ka Gahra, Tehsil Sarkaghat, District Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

(1) The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Sunil Kumar S/o Shri Dhani Ram, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on May 1, 1999, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on May 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after

obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of .seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the .case/seniority. the true position came to notice, retrenchment notices were issued to the .above juniors., who were also .surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP.
2. Whether the petition is not maintainable, as alleged. OPR.
3. Whether the petition suffers from the vice of delay and laches. OPR.
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR.
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1:

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial,



to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars

Ex. PW1/C, which is demonstrative of the petitioner having worked for 176, 289, 352, 359, 322, 392 and 166 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on May 6, 1999. He in paragraph 2 of his statement of claim inter alia averred:

**"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."**

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. PW1/B and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2:

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3:

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1946 dated 12.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 11, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4:

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5:

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.Sen,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 485/2008  
Date of Institution : 14.7.2008  
Date of decision : 30.5.2009

Shri Suresh Kumar S/o Shri Bali Ram, R/o Village & P.O. Brang, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

(1) The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Suresh Kumar S/o Shri Bali Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on December 9, 1998, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on December 9, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of

the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947"

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers, some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the case/seniority, the true position came to notice, retrenchment notices were issued to the above juniors, who were also surplus to the requirement. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP.
2. Whether the petition is not maintainable, as alleged. OPR.
3. Whether the petition suffers from the vice of delay and laches. OPR.
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1:

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer,

HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 21, 328, 348, 361, 361, 361, 299 and 170 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the



absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on December 5, 1998. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement. "**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;". There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### ISSUE 2:

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3:

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act,

1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2096 dated 17.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4:

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5:

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 434/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Shri Tulsi Ram S/o Shri Ghantha Ram, R/o Village Trambala, Longani, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

- (1) The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Shri Tulsi Ram S/o Shri Ghantha Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on June 9, 1998, and that he worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, his services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that in terminating his services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for his retrenchment the said Chief Engineer had not afforded him an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for his retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to him, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which his (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. He also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on June 9, 1998 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for his retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given him an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of seniority of workers. some workers were transferred from other

Divisions/Sub Divisions. However, when on scrutiny of the .case/seniority. the true position came to notice, retrenchment notices were issued to the .above juniors., who were also .surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP.
2. Whether the petition is not maintainable, as alleged. OPR.
3. Whether the petition suffers from the vice of delay and laches. OPR.
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR.
6. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1:

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner.s allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is : Whether or not Dharampur Division of Public Works Department is an .industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner's retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner's retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service.** For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case."

15. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 23, 310, 315, 328, 329, 340, 276 and 179 days in the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on December 1, 1998. He in paragraph 2 of his statement of claim inter alia averred: "That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of .first come, last go."

18. In reply, the respondent in paragraph 2 inter alia averred:

"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

20. Further, the petitioner in his affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to him, were still working with the respondent. Of these workmen, however, only two namely Shashi Lal and Roshani Devi, who figure at serial nos. 646 and 652 in the seniority list Ex. PW1/B and are shown to have been engaged on April 6, 1999 and July 4, 1999 respectively, were indubitably junior to the petitioner. The said seniority list is indicative of these workmen having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of his unlawful retrenchment.

21. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for him and his family members;" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2:

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3:

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1945 dated 12.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not

suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4:

25. The respondent.s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5:

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref. No. : 404/2008  
Date of Institution : 13.6.2008  
Date of decision : 30.5.2009

Smt. Yashoda Devi W/o Shri Mahajan Singh, R/o Village Balyana, P.O. Madi, Tehsil Sarkaghat, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

*..Respondent.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

(1) The following reference was received for adjudication from the appropriate Government:

**"Whether retrenchment of services of Smt. Yashoda Devi W/o Shri Mahajan Singh, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?"**



2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis on February 1, 1999, and that she worked as such in Dharampur Division of HP.PWD upto July 7, 2005. On July 8, 2005, her services were terminated by the respondent in an arbitrary manner. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that in terminating her services, the respondent had violated the principle of "Last Come First Go" as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workmen, who were junior to her, were retained in service at the time her services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because the Chief Engineer, HP.PPWD (B&R) Central Zone, Mandi, who had granted permission to the respondent to terminate the services of the petitioner and other workers employed in HP. PWD Division, Dharampur, could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act. Alleging that before granting permission for her retrenchment the said Chief Engineer had not afforded her an opportunity of being heard, the petitioner further averred that the Chief Engineer had while granting permission for her retrenchment acted in a biased manner because of his being interested in the matter. The permission granted by the Chief Engineer for retrenchment of the petitioner thus being illegal, the petitioner's consequent retrenchment was unlawful and unjustified. Another count on which the petitioner's retrenchment, according to her, is illegal and unjustified, is the falsity of the respondent's claim that there was paucity of work and funds on account of which her (petitioner) services were no longer required. Falsity, because sufficient work and funds were available in Dharampur Division of HP.PWD at the time the petitioner and other workers were retrenched. The petitioner therefore prayed for setting aside the Labour and Employment Notification No. Shram(A)4-1/2005 dated February 14, 2005 whereby the Chief Engineer, HPPWD (B&R) Central Zone, Mandi was notified as specified authority for Mandi Zone. She also prayed for setting aside the permission granted by the said specified authority for the retrenchment of the petitioner. Besides, the petitioner prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits.

3. Without disputing in entirety the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on February 1, 1999 and retrenched on July 8, 2005, the respondent in his reply denied having violated the provisions of the Act in terminating the services of the petitioner by a notice under section 25N of the Act. Explaining the reason why the petitioner and some other workmen were retrenched, the respondent averred that the strength of casual labour being very high, it was not possible "to continue the same strength of labour" due to paucity of funds and work. According to the respondent, the funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads and other developmental works in Mandi district. So, it was under these circumstances that the respondent dispensed with the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was duly notified as specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. Refuting the petitioner's contention that the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as specified authority for the purpose of Section 25N (1) (b) of the Act, the respondent inter alia averred:

**"The Chief Engineer (CZ) HPPWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Disputes Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of workers of the Himachal Pradesh Public Works Department and now vide notification dated 14.2.2005. The Chief Engineers of the Three Zone i.e. South Zone, Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department, and to avoid financial hardships in workers in case of dispute arising under the provision of the Industrial Disputes Act, 1947."**

4. The petitioner's allegation that before granting permission for her retrenchment the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi had not given her an opportunity of being heard, is also repudiated by the respondent. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of .seniority of workers. some workers were transferred from other Divisions/Sub Divisions. However, when on scrutiny of the .case/seniority. the true position came to notice, retrenchment notices were issued to the .above juniors., who were also .surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches, and that the petitioner is guilty of suppressio veri.

5. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP.
2. Whether the petition is not maintainable, as alleged. OPR.
3. Whether the petition suffers from the vice of delay and laches. OPR.
4. Whether the petitioner is guilty of suppressio veri.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR.
6. Relief.
7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1:

8. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

9. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

10. The parties. pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein was engaged the petitioner, to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof as where was engaged the petitioner, cannot therefore be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner.s services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (i) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. Once Dharampur Division of HP.PWD, particularly such location thereof as where was engaged the petitioner, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner.s retrenchment under the above provisions cannot be said to be lawful.

12. Another count on which the petitioner.s retrenchment under Section 25N of the Act cannot be said to be lawful, to my mind, relates to the illegality committed by the State Government in notifying the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi as specified authority from whom prior permission for retrenchment of the petitioner and other workers was obtained by the respondent under Section 25N (1) (b) of the Act. The said Chief Engineer is undeniably the head of HP.PWD (B&R) Central Zone, Mandi wherein is comprised Dharampur Division of HP. PWD. For the sake of fair play and justice the head of the Zone in which was employed the retrenched workman, ought not to have been notified as specified authority. Since the Chief Engineer, HP.PWD (B&R) Central Zone, Mandi ought not to have been notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. So, on this count as well the petitioner.s retrenchment under Section 25N of the Act can safely be held to be illegal.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette".

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case".

15. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance. More so, in view of the seniority list of the retrenched Beldars Ex. PW1/C, which is demonstrative of the petitioner having worked for 208, 304, 355, 362, 354, 267 and 173 days in the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively.

16. But even if Dharampur Division of HP.PWD, or for that matter such location thereof as where the petitioner was working at the material time, is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The seniority list of the retrenched Beldars Ex. PW1/C is demonstrative of the petitioner having been engaged as daily waged Beldar on May 10, 1999. She in paragraph 2 of her statement of claim inter alia averred:

**"That no seniority list (as per law) has been prepared by the respondent HPPWD and juniors to the applicant in the same category have been allowed to be continued and these juniors are still working with the respondent HPPWD in its Dharampur Division. However, the claimant/applicant has been retrenched. The respondent department has violated the basic principle of first come, last go.."**

18. In reply, the respondent in paragraph 2 inter alia averred:

**"That the contents of this para are admitted to the extent that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers who were transferred from other Division/Sub-Division. The case/seniority has been scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus as per the requirement."**

19. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

20. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. PW1/B and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. It may also be noticed that the respondent's witness Sh. Naresh Kumar Sharma, Executive Engineer, HP.PWD Dharampur, admitted in no ambiguous words the petitioner's suggestion in his cross-examination as RW1 "that Smt. Roshani Devi w/o Nag Ram and Shashi Kant S/o Bihari Lal, whose names figure at serial nos. 652 and 646 respectively in the seniority list Ex. PW1/B, were engaged as daily wagers on 4.7.1999 and 6.4.1999 respectively and are still working with the department." In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

21. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members." There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

#### ISSUE 2:

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3:

23. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

**"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).**

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 664/07-1775, dated April 4, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)ID/2007-Mandi dated April 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4:

25. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

26. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of May, 2009.

(S.S.Sen)  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

### बहुउद्देशीय परियोजनाएं एवं विद्युत विभाग

#### अधिसूचना

शिमला, 6 सितम्बर, 2010

**संख्या विद्युत.-छ-(5)-14/2010.**—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि सतलुज जल विद्युत निगम लिमिटेड जो कि भू-अर्जन अधिनियम, 1894 (1894 का पहला अधिनियम) की धारा-3 के खण्ड (सीसी.) के अन्तर्गत सरकार के स्वामित्व और नियन्त्रण के अधीन एक निगम है, के द्वारा अपने व्यय पर सार्वजनिक प्रयोजन हेतु नामतः मुहाल परलोग, तहसील करसोग, जिला मण्डी, हि0 प्र0 में लुहरी जल विद्युत परियोजना के लिए सड़क एवं कार्य सुविधा हेतु भूमि अर्जित करनी आपेक्षित है, अतएव: एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि विवरणी में निर्दिष्ट किया गया है, को उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. भू-अर्जन अधिनियम, 1894 की धारा-6 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों की सूचना हेतु घोषणा की जाती है और उक्त अधिनियम की धारा-7 के उपबन्धों के अधीन भू-अर्जन समाहर्ता, सतलुज जल विद्युत निगम लिमिटेड, स्थित सुन्नी, तहसील सुन्नी, जिला शिमला, हि0 प्र0 का भूमि के अर्जन के लिए आदेश लेने का एतद्वारा निर्देश दिया जाता है।

3. भूमि के रेखांक का निरीक्षण कार्यालय भू-अर्जन समाहर्ता, सतलुज जल विद्युत निगम लिमिटेड, लुहरी जल विद्युत परियोजना, स्थित सुन्नी, तहसील सुन्नी, जिला शिमला, हि0 प्र0 में किया जा सकता है।

#### विवरणी

जिला	तहसील	मुहाल	खसरा नं०	रकवा (बीघों में)
मण्डी	करसोग	परलोग	1/1	01-16-00
			2	16-07-05
			3	00-06-00
			4	05-07-07
			5	00-01-00
			कुल कित्ता- 5	रकवा-23-17-12 बीघा

आदेश द्वारा,  
हस्ताक्षरित/-  
प्रधान सचिव।

**निर्वाचन विभाग**

ब्लॉक नम्बर-38, एस.डी.ए. कॉम्प्लैक्स, कसुम्पटी, शिमला-171009

**अधिसूचना**

शिमला, 09 सितम्बर, 2010

**संख्या 5-17/2007-ईएलएन.**—हिमाचल प्रदेश की राज्यपाल, विभागीय पदोन्नति समिति की सिफारिशों के आधार पर श्री भुपिन्द्र कुमार शर्मा, वरिष्ठ सहायक, निर्वाचन विभाग मुख्यालय, शिमला को अनुभाग अधिकारी, श्रेणी-I (राजपत्रित) के पद पर संशोधित वेतन संरचना (Revised pay structure) 10300-34800+5000 ग्रेड पे + 400/- रूपए सचिवालय भत्ता में कार्यभार ग्रहण करने की तिथि से पदोन्नति के सहर्ष आदेश देती हैं।

हिमाचल प्रदेश की राज्यपाल पदोन्नति के फलस्वरूप उक्त अधिकारी को निर्वाचन विभाग मुख्यालय, शिमला में अनुभाग अधिकारी के रिक्त पद के विपरीत पदस्थापित करने के भी सहर्ष आदेश देती हैं।

पदोन्नति के फलस्वरूप उक्त अधिकारी दो वर्ष की अवधि के लिए परीक्षा पर रहेंगे, जिसका एक वर्ष से अनाधिक और ऐसी अवधि के लिए विस्तार किया जा सकेगा जैसा कि सक्षम प्राधिकारी विशेष परिस्थितियों में और लिखित कारणों से आदेश दें।

पदोन्नति के फलस्वरूप यदि उक्त अधिकारी मूल नियमों के नियम-22(I)(a) (1) के अपवाद खण्ड के अधीन पूर्व पद पर वेतन वृद्धि अर्जित करने के पश्चात् वेतन निर्धारण के इच्छुक हो तो उस दशा में अनुभाग अधिकारी के पद का कार्यभार ग्रहण करने की तिथि से एक मास के भीतर उन्हें विकल्प प्रस्तुत करना होगा अन्यथा इस अवधि के पश्चात् उपरोक्त नियम के अधीन वेतन निर्धारण का लाभ देय नहीं होगा।

आदेश द्वारा,  
हस्ताक्षरित /—  
सचिव (निर्वाचन)।

**लोक निर्माण विभाग****अधिसूचना**

शिमला-2, 9 सितम्बर, 2010

**संख्या पी.बी.डब्ल्यू(बी0)एफ(5)66/2009.**—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामत गांव कल्याणा, तहसील अर्की, जिला सोलन में कुनिहार-बैन्ज की हट्टी-शैली-ब्रह्मपुखर सड़क के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद्वारा यह घोषित किया जाता है कि निम्नलिखित विवरणी में वर्णित भूमि उपर्युक्त प्रयोजन के लिए अपेक्षित है।

2. यह घोषणा, भूमि अर्जन अधिनियम, 1894 की धारा-6 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों को सूचना हेतु की जाती है तथा उक्त अधिनियम की धारा-7 के अधीन भू-अर्जन समाहर्ता लोक निर्माण विभाग, विन्टर फिल्ड शिमला को उक्त भूमि के अर्जन करने के आदेश लेने का एतद्वारा निदेश दिया जाता है।

3. भूमि रेखांक का निरीक्षण भू-अर्जन समाहर्ता, लोक निर्माण विभाग, विन्टर फिल्ड शिमला के कार्यालय में किया जा सकता है।

**विवरणी**

जिला	तहसील	गांव	खसरा नम्बर	क्षेत्र (बीघा—बिस्वा)
सोलन	अर्की	कल्याणा	83/61/1	0—16
			81/62/1	0—12
कुल जोड़ किता : 2				1—8

आदेश द्वारा,  
हस्ताक्षरित/—  
प्रधान सचिव।

**लोक निर्माण विभाग****अधिसूचना**

शिमला—2, 9 सितम्बर, 2010

**संख्या पी.बी.डब्ल्यू(बी0)एफ(5)124/2009.**—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु गांव थाना, उप तहसील टिक्कर, जिला शिमला में बैधार—थाना सड़क के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद्द्वारा यह घोषित किया जाता है कि निम्नलिखित विवरणी में वर्णित भूमि उपर्युक्त प्रयोजन के लिए अपेक्षित है।

2. यह घोषणा, भूमि अर्जन अधिनियम, 1894 की धारा—6 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों को सूचना हेतु की जाती है तथा उक्त अधिनियम की धारा—7 के अधीन भू—अर्जन समाहर्ता लोक निर्माण विभाग (शिमला क्षेत्र) शिमला को उक्त भूमि के अर्जन करने के आदेश लेने का एतद्द्वारा निदेश दिया जाता है।

3. भूमि रेखांक का निरीक्षण भू—अर्जन समाहर्ता, लोक निर्माण विभाग (शिमला क्षेत्र) शिमला—3 के कार्यालय में किया जा सकता है।

**विवरणी**

जिला	उप तहसील	गांव	खसरा नं०	रकवा(है०) में
शिमला	टिक्कर	थाना	453	0—02—48
			240/1	0—00—47
			65/1	0—01—38
			314/1	0—02—42
कुल किता 4				0—06—75

आदेश द्वारा,  
हस्ताक्षरित/—  
प्रधान सचिव।



ब अदालत श्री के० आर० भारद्वाज, सहायक समाहर्ता द्वितीय श्रेणी एवं तहसीलदार, बन्जार, जिला कुल्लू, हिमाचल प्रदेश

श्री ज्ञान चन्द सुपुत्र श्री वली राम, निवासी शलिन्दरा, फाटी थाटीबीड, कोठी गोपालपुर, तहसील बन्जार, जिला कुल्लू, हिमाचल प्रदेश।

बनाम

श्री वली राम एवं सर्वसाधारण (आम जनता)

इश्तहार मकफूल-उल-खबरी (लापता होने) श्री वली राम ।

श्री ज्ञान चन्द सुपुत्र श्री वली राम, निवासी शलिन्दरा, फाटी थाटीबीड, कोठी गोपालपुर, तहसील बन्जार, जिला कुल्लू, हिमाचल प्रदेश ने पटवारखाना मंगलौर में उपस्थित आकर रपट रोजनामचा वाक्यती नम्बर 364, दिनांक 23-4-2010 को दर्ज करवाई है कि उसका पिता श्री वली राम सुपुत्र श्री मणू पिछले लगभग 22 वर्षों से घर से लापता है व तब से आज दिन तक उसे किसी ने यहां नहीं देखा है तथा उसके जीवित एवं मृतक होने बारे कोई प्रमाण भी नहीं है। उक्त दर्ज करवाई गई रपट रोजनामचा वाक्यती के अनुसार पटवारी पटवार वृत्त मंगलौर ने श्री वली राम की मकफूल-उल-खबरी (लापता होने) से सम्बन्धित इन्तकाल नम्बर 1611, फाटी थाटीबीड व इन्तकाल नम्बर 1329, फाटी जौरी में श्री वली राम के उचित उत्तराधिकारियों ज्ञान चन्द पुत्र व कौशल्या देवी पुत्री श्री वली राम, के नाम पर दर्ज कर रखे हैं जो अभी तस्दीक एवं फैसला के लिए लम्बित है।

अतः श्री वली राम उक्त को इस इश्तहार मकफूल-उल-खबरी (लापता होने) के द्वारा सूचित किया जाता है कि यदि श्री वली राम जीवित है तो वह दिनांक 22-9-2010 को या इससे पूर्व अधोहस्ताक्षरी के न्यायालय में असालतन अथवा वकालतन उपस्थित आए। इसके अलावा सर्वसाधारण (आम जनता) को भी सूचित किया जाता है यदि उक्त श्री वली राम मकफूल-उल-खबरी (लापता) के ऊपर वर्णित दर्ज शुद्धा इन्तकालात मकफूल-उल-खबरी के तस्दीक एवं फैसला होने बारे किसी को एतराज हो तो वह भी दिनांक 22-9-2010 या इससे पूर्व अधोहस्ताक्षरी के न्यायालय में असालतन अथवा वकालतन उपस्थित आकर पेश करे। दिनांक 22-9-2010 को उक्त श्री वली राम यदि उपस्थित नहीं आता है तथा सर्व साधारण (आम जनता) की ओर से भी कोई एतराज पेश नहीं होता है तो उनके विरुद्ध एक पक्षीय कार्यवाही को अमल में लाई जाकर श्री वली राम मकफूल-उल-खबरी (लापता) के ऊपर वर्णित दर्ज शुद्धा इन्तकालात उसके उचित उत्तराधिकारियों के नाम पर तस्दीक एवं फैसला कर दिया जाएगा।

आज दिनांक 21-8-2010 को मेरी अदालत की मोहर व हस्ताक्षर से जारी किया गया।

मोहर।

के० आर० भारद्वाज,  
सहायक समाहर्ता द्वितीय श्रेणी एवं तहसीलदार,  
बन्जार, जिला कुल्लू, हिमाचल प्रदेश।

ब अदालत श्री परमदेव ठाकुर, कार्यकारी दण्डाधिकारी, उप-तहसील निहरी, जिला मण्डी, हिमाचल प्रदेश

मुकद्दमा :

श्री ओम प्रकाश उपनाम हेम प्रकाश पुत्र श्री जीवा राम, निवासी किन्दर, डाकघर वैहली, उप-तहसील निहरी, जिला मण्डी, हिमाचल प्रदेश।

बनाम

आम जनता

श्री ओम प्रकाश उपनाम हेम प्रकाश पुत्र श्री जीवा राम, निवासी किन्दर, डाकघर वैहली, उप-तहसील निहरी, जिला मण्डी, हिमाचल प्रदेश ने इस न्यायालय में प्रार्थना-पत्र पेश किया है कि प्रार्थी का नाम ओम प्रकाश व हेम प्रकाश लिखा है जिसमें प्रार्थी को बहुत असुविधा हो रही है, जिसकी दुरुस्ती ओम प्रकाश उपनाम हेम प्रकाश होनी चाहिए।

अतः इस इशतहार के द्वारा आम जनता को सूचित किया जाता है कि किसी व्यक्ति को इस बारा कोई उजर/एतराज हो तो वे 9-10-2010 को प्रातः 10.00 बजे इस न्यायालय में वकालतन व असालतन पेश करें। अन्यथा कार्यवाही एकतरफा अमल में लाई जाएगी।

आज दिनांक 19-8-2010 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

परमदेव ठाकुर,  
कार्यकारी दण्डाधिकारी,  
उप-तहसील निहरी, जिला मण्डी, हिमाचल प्रदेश।

-----

**In the Court of Shri Layak Ram Negi, Sub-Divisional Magistrate Shimla(R), District Shimla, Himachal Pradesh**

Smt. Nirmla w/o Shri Amar Singh, r/o Village. Lagaru, P. O. Anji Brahmana, Tehsil & Distt. Shimla, Himachal Pradesh ..Applicant.

*Versus*

General Public

..Respondent.

Whereas Smt. Nirmla w/o Shri Amar Singh, r/o Village. Lagaru, P. O. Anji Brahmana, Tehsil & Distt. Shimla has filed an application along with an affidavit in the court of undersigned under section 13 of the Births and Deaths Registration Act, 1969 to enter the name and date of birth of her daughter's namely Tanuja Thakur born on 27-3-1991 and Poonam Thakur born on 26-4-1992 in the record of G. P. Thari.

Hence, this proclamation is issued made to the general public if they have any objection/claim regarding entries of name and date of birth of the daughter's of Smt. Nirmla w/o Shri Amar Singh, r/o Village. Lagaru, P. O. Anji Bharmana, Tehsil & Distt. Shimla, the same may file their claim/objection on or before one month of publication of this notice in Government Gazette in this court, failing which necessary orders will be passed.

Given today 2nd August, 2010 under my signature and seal of the court.

Seal.

LAYAK RAM NEGI,  
Sub-Divisional Magistrate Shimla(R),  
District Shimla, Himachal Pradesh.

**In the Court of Shri Layak Ram Negi, Sub-Divisional Magistrate Shimla(R), District Shimla, Himachal Pradesh**

Shri Sushil Kumar s/o Shri Ram Kumar, r/o Village Phyal, P. O. Dhari, Tehsil & Distt. Shimla, Himachal Pradesh

..Applicant.

*Versus*

General Public

..Respondent.

Whereas Shri Sushil Kumar s/o Shri Ram Kumar, r/o Village Phyal, P. O. Dhari, Tehsil & Distt. Shimla has filed an application along with an affidavit in the court of undersigned under section 13 of the Births and Deaths Registration Act, 1969 to enter the name and date of birth of the applicant Sushil Kumar born on 6-7-1974 in the record of G. P. Jalel.

Hence, this proclamation is issued made to the general public if they have any objection/claim regarding entries of name and date of birth of Shri Sushil Kumar s/o Shri Ram Kumar, r/o Village Phyal, P. O. Dhari, Tehsil & Distt. Shimla the same may file their claim/objection on or before one month of publication of this notice in Government Gazette in this court, failing which necessary orders will be passed.

Given today 8th September, 2010 under my signature and seal of the court.

Seal.

LAYAK RAM NEGI,  
Sub-Divisional Magistrate Shimla(R),  
District Shimla, Himachal Pradesh.

---

**राजस्व विभाग**

**अधिसूचना**

शिमला-2, 8 सितम्बर, 2010

**सं० रैव-डी (जी) 7-6/2008.**—यतः हिमाचल प्रदेश की राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार के माध्यम से इण्डिया मैटीलोजिकल विभाग, मैटोलोजिकल केन्द्र शिमला को अपने विभागीय व्यय पर सार्वजनिक प्रयोजन हेतु उप मुहाल जाखु (शिमला) शहर तहसील व जिला शिमला में बैंड डॉपलर राडार स्थापित करने तथा मौसम केन्द्र शिमला और इनके विभिन्न विभागों हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद्वारा यह घोषित किया जाता है कि निम्नलिखित विवरणी में वर्णित भूमि उपर्युक्त प्रयोजन के लिए अपेक्षित है।

2. यह घोषणा भूमि अर्जन अधिनियम 1894 की धारा-6 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों को सूचना हेतु की जाती है तथा उक्त अधिनियम की धारा-7 के अधीन भू-अर्जन समाहर्ता एवं उपमण्डलाधिकारी (ना०), शिमला शहरी को उक्त भूमि के अर्जन करने के आदेश लेने का एतद्वारा निदेश दिया जाता है।

1. भूमि रेखांक का निरीक्षण भू अर्जन समाहर्ता एवं उप मण्डलाधिकारी (ना०), शिमला शहरी के कार्यालय में किया जा सकता है।

## विवरणी

जिला	तहसील	मुहाल/गांव	खसरा नं०	भूमि की किस्म	रकवा (वर्ग मीटर)
शिमला	शिमला	जाखु (शिमला)	90	गैर-मुमकिन बर्फघर	28-16
			91	गैर-मुमकिन अहाता	4826-76
			92	गैर-मुमकिन रसाईघर	09-00
			93	गैर-मुमकिन रसाईघर	04-48
			94	गैर-मुमकिन मकान	59-28
			95	गैर-मुमकिन मवेशीखाना	13-75
			96	गैर-मुमकिन मकान	90-75
			97	गैर-मुमकिन बरामदा	25-50
			98	जाये सफेद	628-74
			99	जाये सफेद	1761-19
			100	गैर-मुमकिन अहाता	457-15
			101	गैर-मुमकिन अहाता	25-25
			102	गैर-मुमकिन सड़क	583-88
				कुल जोड़ :-	8513-89 वर्ग मीटर

आदेश द्वारा,  
हस्ताक्षरित/-  
प्रधान सचिव।